Federal Register

Monday,
June 24, 2002

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2002; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

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 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately $479.5 million.

EFFECTIVE DATE: August 23, 2002.

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/reading-rm/adams.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 e-mail 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 Web site (*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; Telephone 301–415–6057 or Robert Carlson; Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Background

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 by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately $479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 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, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. 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. Response to Comments

The NRC published the FY 2002 proposed fee rule on March 27, 2002 (67 FR 14818), to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received 11 comments before the comment period ended on April 26, 2002, and three additional comments by May 24, 2002, for a total of 14 comments that were considered in this fee rulemaking. Many of the commenters raised similar issues. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

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 indicated that more detailed information would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility. The commenter acknowledged the ability to access the agency work papers through the NRC's Public Document Room or by using the Agencywide Documents Access and Management System (ADAMS), but finds this supporting material to be indecipherable.

Response. Consistent with the requirements of OBRA–90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 96 percent of the NRC's FY 2002 budget authority, less the amounts appropriated from the NWF and the General Fund, from the various classes of licensees. 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 since the NRC's budget and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs

for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171.

The NRC acknowledges that the work papers supporting the proposed fee rule contain very detailed information. The work papers reflect the complexity of the fee calculation process that is necessary to ensure that the fees are fair and equitable to all licensees. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses.

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 17, "Budget Estimates and Performance Plan, Fiscal Year 2002 (April 2001)," which discusses the NRC's budget for FY 2002, including the activities to be performed in each strategic arena. The NRC also has made this document available on its public Web site at *http://www.nrc.gov/who-we-are/plans.html*. 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. Additionally, the contacts listed in the proposed fee rule were available during the public comment period to answer any questions that commenters had on the development of the proposed fees. No inquiries of this nature were received during the comment period.

B. Specific Part 170 Issues

1. Hourly Rates

Comment. Several commenters opposed the $152 proposed hourly rate for the materials program. The commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and is counterproductive to NRC's apparent efforts to reduce the total fee burden to uranium recovery licensees.

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 hourly 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, utilities, supplies, and payroll and human resources staffs.

The increase in the hourly rates is primarily due to the Government-wide pay increase in FY 2002. 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. 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 $156, compared to $150 in FY 2001, and the professional hourly rate for the materials program is $152, compared to $144 in FY 2001. 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. Fee Exemptions for Special Projects

Comment. Five comments were received opposing the NRC's proposed modifications to the fee waiver provisions for special projects, most of which criticized the proposed rule for the anticipated chilling effect the "primary beneficiary" criterion will have on encouraging and supporting "ground-breaking" actions by licensees. These commenters believe that the proposed revisions would discourage cooperative efforts between the NRC and industry to address safety issues and opportunities for generic regulatory improvement. Some commenters asserted that the changes are inconsistent with the NRC's goals to improve regulatory efficiency and effectiveness, to reduce unnecessary burden on stakeholders, and to promote increased realism in regulatory decision-making. Several commenters stated that without some relief from fees, there is no incentive for a licensee to take the lead on an industry initiative that may contribute to generic regulatory activity and which may serve as a model for other licensees. Two commenters stated that relocating the fee waiver requirements to 10 CFR 170.11(a)(1) adds a degree of formality to the process and that such formality costs the industry and the NRC resources and time. The commenters urged the NRC to revise the provisions to encourage industry to work cooperatively with the NRC on generic regulatory improvements or efforts.

As part of its commentary on what it views as the evolution of the fee waiver provision, one commenter suggested that the NRC's FY 2001 fee rule change adding the word "NRC's" in the third fee waiver criteria was an attempt to distinguish between waiver requests based on the industry's future use of the documents, in contrast to reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements. The commenter asserted that the proposed change for the FY 2002 fee rule goes further in establishing barriers to unsolicited industry proposals for generic regulatory improvements. The commenter claimed that these interpretations are inconsistent with the history of the fee rule and many generic industry initiatives reviewed by NRC without a fee, prior to 1999. This commenter predicted that the proposed change will discourage industry initiatives and penalize self-generated industry-wide generic initiatives, which it contended is inconsistent with Commission and NRC management encouragement of industry initiatives. The commenter pointed to SECY–00–0016, "Industry Initiatives in the Regulatory Process," in which the staff discussed how industry initiatives would save resources and improve timeliness of actions. The commenter also referred to the Commission's direction to the staff, in response to SECY–96–062, "to evaluate, on a case-by-case basis, initiatives proposing further NRC reliance on industry activities as an alternative to NRC activities."

The same commenter stated that it is difficult to determine if an industry report will be used for generic regulatory improvement prior to NRC review. The commenter also complained that its intended purpose stated at the time of submittal, and associated fee waiver requests, typically have been rejected by the NRC's Chief Financial Officer (CFO), making it "difficult for the staff to make an informed decision as to the intended use of the submittal." The commenter goes on to say that the NRC staff is reluctant to discuss fee or usage matters with the commenter, although these discussions are needed to assist the staff in making a recommendation on the fee waiver.

The commenter also disagreed with basing the fee waiver on which organization—the NRC or industry—is the primary beneficiary. The commenter stated that waiving the fees for generic industry proposals that facilitate regulatory improvement will encourage

initiatives which benefit both industry and NRC, pointing to the NRC's Strategic Performance Goals of reducing unnecessary regulatory burden and achieving greater realism in regulatory decisions. The commenter argued that the NRC should not impose a policy that encourages industry to ignore the best science and instead tell the NRC staff what it wants to hear in order to obtain a waiver of review fees.

The commenter argued that NRC's budget is not enhanced by imposing part 170 fees for services, since whatever is not recovered through part 170 fees will be made up by charging part 171 annual fees. This suggests that there is no budgetary imperative for charging part 170 fees (sought to be relieved by these fee waiver requests), rather than allowing the costs to be absorbed through the imposition of annual fees. In the commenter's words, "granting or denying a waiver is 'revenue neutral'," however, the commenter stated that fees for services present a serious budgetary problem for industry organizations. According to the commenter, these organizations operate on tight budgets that do not normally cover NRC review fees. Imposition of these fees reduces the amount of research work the commenter's organization can do to support the membership, and slows down efforts on risk informed initiatives.

To address these concerns, the commenter recommended the fee waiver provision be revised so it applies not only to those submittals requested by the NRC, but also to those proposals for generic regulatory improvements submitted by industry organizations representing all licensees, including those which are unsolicited and need NRC review, and are supported by the membership as a generic submittal. The commenter stated it would ensure that its fee waiver requests are reviewed and supported by its members, and that its membership agrees to NRC cost recovery for these reviews through part 171 annual fees.

Response. As previously stated in the proposed fee rule, the modifications to the fee waiver criteria do not represent a change in NRC policy. Rather, the changes are clarifications intended to assist applicants in determining in advance whether their submittals are likely to meet the fee waiver criteria.

The NRC has consistently applied its policy of waiving the part 170 fees for special projects submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements, and assessing part 170 fees for the review of special projects that are submitted for other purposes, including those that support industry generic improvements. Part 170 fees are based on the provisions of the Independent Offices Appropriations Act of 1952 (IOAA). This statute allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. While the NRC has the authority to grant waivers from the part 170 fee requirements, fee exemptions are granted very sparingly in order to meet the requirements of OBRA–90 that almost all of the agency's budget authority be recovered through IOAA and annual fees.

The NRC finds no justification for granting a part 170 fee waiver to an industry organization seeking an NRC approval of an industry initiative, unless the initiative will be used for NRC's generic regulatory improvements, and the initiative was submitted specifically for that purpose. In the latter case, the NRC's review and approval is part of the process of developing the NRC's generic regulatory program, and therefore the review activities are similar to other NRC generic regulatory activities whose costs are recovered through part 171 annual fees. Conversely, reviews of submittals that are for the industry's generic improvements or use are considered services provided to identifiable recipients. These are subject to IOAA fees, under applicable caselaw. *See, e.g., Mississippi Power & Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F. 2d 233 (C.A. 5, 1979), cert. den. 444 U.S. 1102 (1980). Further, the "primary beneficiary" concept is solidly rooted in pertinent caselaw, which authorizes the assessment of fees for specific services/benefits against identifiable beneficiaries, even if the service confers a benefit beyond that, *i.e.,* upon the general public as well. *Engine Mfrs. Ass'n* v. *E.P.A.,* 20 F. 3d 1177 (C.A.D.C. 1994).

To say that the CFO's rejection of the submitter's stated purpose and the related fee waiver request "makes it difficult for the staff to make an informed decision as to the intended use of the submittal" reverses the proper order of things. The staff must provide technical advice and recommendations to assist the CFO in making the appropriate determination of fee waiver entitlement. The submittal, and thus, potential for fee waiver, is to be weighed on the merits and how it relates to the NRC's regulatory initiatives, from which fee considerations flow, not the other way around. Moreover, while the program staff certainly should be able to communicate freely with the submitter on the technical merits of the submittal, it is appropriate for the program staff to be reluctant to discuss fee matters with the submitter because that is not the program staff's area of expertise. Fee issues and discussions are the responsibility of the CFO's staff; and therefore, to avoid confusion and misunderstanding, fee matters should be discussed with the CFO's staff instead of the program staff. On the other hand, the submitter is encouraged to have discussions with the technical staff as to those submissions that support the NRC's generic regulatory improvements or efforts. Submitters have a legitimate interest in advance information about the fee implications that will attend a submission, and interactions with both technical and CFO staff on relevant matters are fully appropriate.

The NRC has consistently declined to base its fees on the financial status of NRC licensees and applicants, except the impacts of the fees on small entities the NRC is required to consider under the provisions of the Regulatory Flexibility Act. Therefore, the NRC does not base fee waivers on the budgetary constraints of those requesting NRC services. Further, the determination of whether a fee waiver should be granted is independent of whether there is willingness of the organization's members to pay the costs through part 171 fees. If the organization's members are willing to pay the costs of NRC's fees, the organization can seek reimbursement from its members. The IOAA prescribes the standards for charging fees to identifiable recipients for services or things of value, and there is nothing in the statute that authorizes fee-shifting through consensus.

For this reason, it is also unpersuasive to argue that the NRC should liberally grant part 170 fee waivers based on "revenue neutrality." Under that theory, the NRC need never charge part 170 fees, because whatever is not recouped there will be recovered through part 171 fees. Although the budgeted costs still would be recovered regardless of how the charges are assessed, that is not the standard for fee assessment under the IOAA, nor should it be for purposes of granting or denying fee waiver requests.

Moreover the NRC's fee schedule is not an incentive program. Fees are established in accordance with applicable legal requirements and not meant to be either inducements or disincentives. Rather, they are established to recover the NRC's costs, as required by law. Further, the assessment of part 170 fees for special projects is fully consistent with the NRC's policies on industry initiatives. In SECY 97–303, "The Role of Industry (DSI–13) and Use of Industry Initiatives," the staff stated that fees will

be assessed unless the fee waiver criteria is met. As always, under the fee waiver criteria, NRC will waive the review fees for special projects submitted for the purpose of supporting NRC's regulatory improvements as long as the NRC staff agrees that it will be used by the NRC in developing or improving its regulatory framework. Not every submittal results in a safety improvement, burden reduction, or improved process. The NRC encourages any special project applicant who believes that its proposal will help improve NRC's regulatory process to discuss its proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

With regard to fee waivers for "ground breaking" licensing actions, the fee exemption provision for special projects does not apply to licensing actions. As defined in § 170.3, special projects are those requests submitted to the NRC for review for which fees are not otherwise specified in part 170. Part 170 specifies fees for licensing actions, therefore, first-of-a-kind licensing actions are not special projects for purposes of part 170. The waiver criteria that were previously in footnote 4 of § 170.21 and footnote 5 of § 170.31, which in this final rule the NRC is moving to § 170.11, have always specifically referred to special projects (*see* § 170.11(a)(1)). The NRC is not changing its practice for exemption requests for first-of-a-kind licensing actions and will continue to address such exemption requests on a case-by-case basis under § 170.11(b).

The NRC believes the modifications to the fee waiver criteria language have the potential to save both NRC and industry resources because the industry will have more definitive guidelines on the types of submission that will be granted a fee waiver. The NRC believes these clarifications will better inform the industry, so they will not request fee waivers for those types of special projects which do not meet the waiver criteria. Further, it is unclear how relocating the fee waiver criteria to the exemption section of part 170 adds any formality to the process or how such purported formality will cost the industry or NRC resources and time as some commenters contend. Moving the criteria neither changes the process nor enhances its legal status. The NRC believes that it is more appropriate to have the fee exemption provisions for special projects with the existing part 170 fee exemption provisions.

The NRC, in this final rule, is revising the fee waiver criteria to clarify the fee exemption provisions. In addition, the exemption section of § 170.11 is being revised to include the language that was previously located in footnote 4 to § 170.21 and footnote 5 to § 170.31.

3. Invoice Information

Comment. One commenter asserted that NRC's invoices lack adequate explanations of the work done by NRC staff and NRC contractors. The commenter 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, the commenter contended that the change would serve the NRC, its licensees, and the public well.

Response. As the NRC has stated in the past, 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 the Human Resources Management System (HRMS), 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 HRMS, 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. Additionally, the inspection report number is provided on inspection fee bills. The work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in HRMS. 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.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Upon specific request, the NRC will send all available information in support of the bill to any licensee or applicant who does not understand the charges or needs more information in order to understand the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC does not plan to develop new 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. Mixed Oxide Fuel (MOX) Contested Hearing Costs

Comment. One nuclear industry group commented that the NRC's proposal to assess MOX contested hearing costs to the fuel facility class is unfair, and that it is a violation of OBRA–90 to charge licensees for an agency activity or program from which the licensees receive no benefit. In this case, the commenter asserts that fuel facility licensees should not be responsible for bearing the costs of hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit. Specifically, the MOX program is a Federal government initiative to ensure national security through the disposition of plutonium stockpiles. The commenter further adds that the beneficiaries of the MOX program are the Federal government and the nation's citizenry because it will aid in the reduction of weapons-grade plutonium. As such, the commenter contends that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base. The commenter also states that NRC distributes hearing costs for license applications among the affected class of licensees, and to the extent that they benefit the entire class, this approach is logical. However, the commenter further indicates that hearing costs related to the disposition of plutonium under the MOX program do not meet the threshold of benefitting other licensees in the class, and therefore should not be assessed as such. The commenter makes a final point about the NRC's fee allocation methodology for hearing costs being problematic in that when applied to certain types of licensees whose numbers are few, this could conceivably lead to a competitor having to bear the hearing costs of its competition during NRC licensing proceedings.

Response. OBRA–90 mandates that the NRC collect IOAA (part 170) and annual fees (part 171) to recover almost all of its budgeted costs, less the amounts appropriated from the NWF. Therefore, the NRC must recover hearing costs through part 170 fees for services or through part 171 annual fees. OBRA–90 also requires that, to the maximum extent practicable, the annual charges shall have a reasonable relationship to the cost of providing regulatory services. The NRC has a longstanding policy of charging the affected applicant or licensee part 170 fees for uncontested hearings (*i.e.*, those required as part of the licensing process), and not charging part 170 fees for contested hearings. As a result, the costs for contested hearings are recovered through part 171 annual fees assessed to the affected class of licensee. This policy has been reconfirmed in the statement of considerations and in responses to comments received from the public during many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

The Commission believes there is merit to the comment regarding assessing annual fees for the MOX contested hearing since the hearing is related to a U.S. Government national security initiative. Thus, as a change to the proposed rule, the Commission will not impose the entire budget of the MOX contested license proceeding for FY 2002 on the fuel facility licensee class. This proceeding pertains to the license application for MOX fuel fabrication facility, a U.S. Government national security initiative to dispose of plutonium stockpiles. Since a rulemaking to propose recovery of MOX and other U.S. Government national security initiative contested hearing costs through part 170 fees could not be promulgated and made effective before FY 2003, the Commission is making an interim change for FY 2002 only. This change will recover the $433,000 budgeted for MOX contested hearing activities through part 171 annual fees assessed to all classes of licensees, based on their respective percentages of the NRC's budget. As a result, the amount assessed to the fuel facility class has decreased by approximately $408,000, while the total amount assessed to most of the other classes of licensees has increased correspondingly. Thus, the amounts assessed to each of the affected classes for the FY 2002 MOX contested hearing costs are as follows: *operating reactors*—$345,000; *spent fuel storage/reactor decommissioning*—$33,000; *non-power reactors*—$400; *fuel facility*—$25,000; *materials users*—$19,000; *transportation*—$5000; *rare earth facilities*—$1000; and *uranium recovery*—$4000. For example, this equates to approximately $4,000 per licensee in the power reactor class, which is obtained by dividing the $345,000 by the 104 licensees (due to rounding, dollar amounts are not exact). For the other affected classes of licensees and their respective fee categories, the increases or decreases in annual fee amounts for individual licensees, due to assessment of MOX contested hearing costs, are set forth in the agency work papers. Due to rounding, the annual fees for certain individual licensees in some of the affected classes did not change.

The Commission intends, in the near future, to issue a proposed rule for public comment that would recover the cost for contested hearings involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC plans to conduct this rulemaking so that any proposed change, if adopted in a final rule, would be effective in early FY 2003.

With regard to the commenter's recommendation for the NRC to obtain separate appropriations from the General Fund to cover the MOX contested hearing costs, this is not practicable for FY 2002. The Congress has already passed the FY 2002 Energy and Water Development Appropriations Act, and the NRC is well into implementing its budget under this authority. Furthermore, the commenter is incorrect about how NRC hearing fees are assessed to licensees. As discussed above, the NRC assesses the specific applicant or licensee part 170 fees for the costs of uncontested hearings that are part of the required license application process. However, for contested hearings, the NRC assesses the affected class of licensees the associated costs of the hearing through part 171 annual fees. Similarly, the commenter's point about one licensee conceivably subsidizing the costs of a competitor's licensing hearing is incorrect for the aforementioned reason. Costs associated with a contested hearing are not assessed to a specific category of licensee as mentioned by the commenter, but instead are assessed to the entire affected class of licensees. As stated in the NRC fee schedules, some classes of licensees consist of multiple fee categories.

2. Annual Fees for Materials Users, Including Small Entities

Comment. Two nuclear density gauge users and one manufacturer commented that their fees are too high, and create a significant financial burden on small business owners. One commenter stated that the combined license application fee and annual fee for this category equals 80 percent of the cost of the gauge device. The commenter further asserted that Agreement States' fees average about one-fourth of NRC's proposed fees, causing an unfair disparity in the industry. Another commenter indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that it was essential to maintain this segment of business in order to retain other contracts not related to its NRC license. Therefore, the commenter contended that only income generated from NRC licensed activities should be considered when establishing fees. With respect to the NRC's upper fee level for small entities, the third commenter stated that the broad revenue range encompassing $350,000 to $5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities.

Response. The NRC has responded to similar comments in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA–90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the annual fees for each class of license, including materials users, reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its 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 to address by law.

Based on the provisions of the Regulatory Flexibility Act (RFA), the NRC provides reduced annual fees for licensees who qualify as small entities under the NRC's size standards. The materials users class has the most licensees who qualify for these reduced fees of any class. As such, the materials user class receives the largest amount of annual fee reductions of any class. The FY 2002 total estimated fee amount that will not be collected from licensees who pay reduced annual fees based on their small entity status is approximately $4.5 million, which must be collected from other NRC licensees in the form of a surcharge. Further reductions in fees for materials users would create an additional fee burden on other licensees, thus raising fairness and equity concerns.

As stated in 10 CFR 2.810, *NRC size standards*, the NRC uses the Small Business Administration's (SBA) definition of receipts. Based on the SBA definition, revenue from all sources, not solely receipts from NRC licensed activities, is considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards.

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 revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the OBRA–90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA–90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities.

3. Annual Fees for Uranium Recovery Licensees

Comment. Two uranium recovery industry groups and one licensee commented on the FY 2002 proposed fee rule. All unanimously supported the NRC's revised methodology for allocating uranium recovery budgeted costs, which results in reduced annual fees for the commercial uranium recovery licensees. However, despite the proposed reductions, these commenters felt that the NRC's annual fees are excessive and represent a tremendous burden to the uranium recovery industry, which is already experiencing a severe economic downturn because of the depressed uranium market. The commenters all believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. Thus, the commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs. Additionally, the commenters stated that the NRC has failed to adequately deal with the issue of decreasing numbers of uranium recovery licensees, or charging annual fees to licensees whose facilities are in standby status. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. As such, the commenters argue that there is a lack of reasonable relationship between annual fees and regulatory services rendered by the NRC. One commenter indicated that the NRC's policy of charging annual fees to licensees in standby status, who require minimal oversight, is not commensurate with the benefit of holding a license, and unfairly penalizes those licensees who are waiting for market conditions to improve before they become operational again.

These commenters also supported the revised Office of Nuclear Material Safety and Safeguards' policy for assigning Project Managers. Two of the commenters stated that the change benefits licensees in a standby mode because they do not generally use much of the Project Manager's time. The third commenter stated that recovering more of these costs through annual fees is more equitable because the costs are spread across a range of licensees.

Response. The NRC has responded to the concerns raised by these commenters in several previous fee rulemakings. The NRC acknowledges that the uranium recovery industry is experiencing an economic downturn in the market for uranium. However, since FY 1991, when the 100 percent fee recovery requirement was enacted under OBRA–90, the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the provisions of the RFA. To grant fee relief to the uranium recovery industry on the basis of its economic conditions or business practices (e.g., a licensee's decision whether to remain operational or go into a standby status) could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licenses be required to subsidize the uranium recovery industry through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be difficult to develop a rationale for waiving the fees for uranium recovery licensees while denying similar requests from other NRC licensees, such as well loggers or licensed medical facilities whose industries may also be experiencing economic downturns.

The NRC has conducted numerous analyses concerning the issue of decreasing numbers of licensees, and the effect this has on annual fees. Although a decreasing licensee base is only one of several factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates. In the wide range of scenarios the NRC evaluated during its analyses, most potential remedies to this problem involved establishing arbitrary fee caps or thresholds for certain classes of licensees. Other potential solutions involved combining fee categories. As noted previously, given the requirements of OBRA–90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. The NRC considers that alternatives involving caps or thresholds, and combining fee categories, raise fairness and equity concerns. As such, the Commission has not adopted any of these approaches. Also, the NRC notes that commenters opposed a similarly postulated 50 percent cap on annual fee increases in response to this issue in the FY 1999 proposed fee rule. Thus, the NRC concluded that the most equitable option under the agency's current fee collection mandate was to maintain its existing fee policy, but continue to seek

cost efficiencies through its annual reviews conducted as part of the budget process.

The issue of charging licensees in standby status has been discussed in many previous fee rules. In summary, the Commission has stated that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license authorizing possession and use of nuclear material, irrespective of the licensee's intent to operate its facility or remain in standby, represents the fairest option available under current legislation. This policy is based on the premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not a licensee decides to exercise this authority is a business decision outside the realm of NRC jurisdiction. Additionally, 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. Furthermore, based on fee recovery requirements of OBRA–90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would ultimately increase the annual fees assessed to the remaining licensees. In effect, providing such fee relief would exacerbate the existing condition of decreasing numbers of licensees, which is an ongoing concern of the commenters. Nonetheless, the Commission will reexamine this issue prior to publishing the FY 2003 fee rule.

In this rulemaking, the Commission has adopted the proposed revised methodology for allocating uranium recovery budgeted costs. Moreover, the FY 2002 annual fees reflect the Office of Nuclear Material Safety and Safeguard's revised policy for assigning PMs. As explained previously, part 171 annual fees for the uranium recovery class includes a prorated share of the FY 2002 budgeted costs for the MOX contested hearing.

4. Annual Fees for Power Reactor Licensees

Comment. Three commenters addressed the proposed annual fees for the power reactor class. Two of these commenters agreed with the NRC's policy, clarified in the proposed fee rule, of charging annual fees on a per license basis, and not on a reactor-unit basis. However, according to one of the commenters on this issue, this approach would not be equitable if the NRC assesses two separate annual fees to a dual unit standard reactor facility, such as those certified under part 52, Appendix C, if the sum of these fees exceeded the annual fee charged to multi-unit reactor modular facilities, providing these modular facilities had a single license. The other commenter on this subject asserts the NRC should make it clear in the FY 2002 final rule that the agency's underlying intent is to assess multi-unit reactor modular facilities a single annual fee, regardless of whether the licensee holds a single or multiple combined operating license(s). One commenter stated the industry objects to the NRC's approach of allocating generic costs through part 171, indicating that the power reactor class of licensees bear a large share of the annual fee burden.

Response. In the proposed fee rule, the NRC stated its intent to revise § 171.15(a) to clarify that annual fees are assessed on a per license basis, and not for each reactor unit. The NRC reiterates that this clarification is not a change to its existing policy of charging annual fees for each license. Furthermore, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no such existing licenses at this time. The NRC's intent when proposing these revisions was to make potential applicants for part 52 combined licenses aware that they would be subject to annual fees. At this time, the NRC does not have the information required to make a decision with respect to assessing annual fees for part 52 combined licenses for multi-unit modular reactors. In the future, when the NRC determines its fee structure for part 52 combined licenses, the fees will be assessed in a fair and equitable manner, and to the maximum extent practicable, will reflect a reasonable relationship to the cost of the regulatory services provided.

The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (*e.g.*, allegations, contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders, *etc.*). The final annual fees this year for power reactors also include a prorated share of the FY 2002 budgeted MOX contested hearing costs as previously explained. The annual fees for each class also includes a share of the total surcharge costs to be recovered through annual fees assessed to NRC licensees. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, activities that are exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operating licensees and others. The surcharge is required in order for the NRC to meet the statutory requirement of OBRA–90, as amended, that almost all of the NRC's budget be recovered through IOAA and annual fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. Thus, it is anticipated that the necessity for the NRC to charge licensees for costs that are not directly related to them or to their class will be eliminated, or almost eliminated, by FY 2005.

The agency work papers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the work papers show by class the total costs allocated, and the estimated part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund and General Fund) and the estimated part 170 collections, in accordance with OBRA–90, as amended.

5. Annual Fees for Fuel Facilities Licensees

Comment. One comment was received opposing the NRC's proposed annual fee increase for the uranium hexafluoride conversion category within the fuel facility class, stating that these fees should remain the same as the previous year. The commenter maintained that its conversion facility, which is the only one in the United States, has been unprofitable for the last three years, asserting this is in part due to the U.S. Government's uranium policies. The commenter added that the reduced worldwide demand for uranium has jeopardized the viability of the facility. Additionally, the commenter contended that the NRC's requirement for additional security upgrades for its facility since the September 11, 2001, terrorist attacks, placed additional financial strains on the company. Finally, the commenter indicated that the costs incurred by the company as a result of NRC fees and security requirements will significantly impact the viability of the facility.

Response. The NRC has addressed similar issues from other commenters regarding the impact of fees on industry, both in this fee rule and in previous years' fee rules. As earlier stated, consistent with the requirements of OBRA–90, as amended, the NRC must collect most of its budgeted costs through assessment of fees. These budgeted costs are the resources necessary for the NRC to execute its regulatory oversight of the various licensee classes. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. The annual fees for the various categories of licensees in the fuel facility class are based on the budgeted costs that must be recovered from the class to meet the requirements of OBRA–90, as amended. Although this may create a financial hardship for some licensees, a reduction in the fees assessed to one class or category of licensees would require a corresponding increase in the fees assessed to other licensees. Consequently, the NRC has not based its fees on licensees' economic status, market conditions, or the ability of licensees to pass through the costs to its customers.

The final annual fees this year for the fuel facility class, including the uranium hexafluoride conversion category of licensees, have been adjusted to reflect the Commission's decision with respect to recovering FY 2002 costs for the MOX contested hearing. Specifically, the FY 2002 budgeted costs for the MOX contested hearing will be assessed to all classes of licensees in their annual fees. In the proposed fee rule, 100 percent of these costs were included in the annual fees for the fuel facility class alone. As a result of this change, the final FY 2002 annual fees for the fuel facility licensees are less than the proposed annual fees.

C. Other Issues

1. NRC Budget

Comment. One commenter stated that the NRC's overall budget should be reduced by more efficient use of resources resulting from the agency's revised regulatory approach. Specifically, under the NRC's reactor oversight program, there has been a reduction in the number of regional initiative inspections, yet these reductions are not accounted for in the proposed fees. Moreover, according to the commenter, successful implementation of the reactor oversight program provides the NRC an opportunity to reallocate existing resources to meet the challenges of risk-informing regulations and licensing new reactor designs. The commenter indicated that the NRC should consider consolidating the regional offices in the near term, and eliminating them altogether in the longer term, in order to save agency resources. Another commenter stated that there should be a decrease in fees based on changes in the NRC's regulatory approach and industry's excellent performance.

Response. As noted in several previous fee rules, the NRC's budget and the manner in which the agency implements its programs are not within the scope of this rulemaking. Therefore, this final rule does not address comments concerning the NRC's budget or the use of its resources. The NRC's budget is 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 execute its statutory obligations. In compliance with OBRA–90, as amended, the fees are established to recover the required percentage of the approved budget.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 96 percent of its FY 2002 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 2002 is $559.1 million, of which approximately $23.7 million has been appropriated from the NWF. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately $479.5 million in FY 2002 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 2002 is $26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately $477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $124.0 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately $8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining $345.6 million will be recovered through the part 171 annual fees, compared to $331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in millions]

Total Budget Authority	$559.1
Less NWF	−23.7
Less General Fund	−36.0
Balance	$499.5
Fee Recovery Rate for FY 2002	× 96.0%
Total Amount to be Recovered For FY 2002	$479.5
Less Carryover from FY 2001	−1.7
Amount to be Recovered Through Fees and Other Receipts	$477.8
Less Estimated Part 170 Fees and Other Receipts	−124.0

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002—Continued

[Dollars in millions]

Part 171 Fee Collections Required	$353.8
Part 171 Billing Adjustments:	
Unpaid FY 2002 Invoices (estimated)	2.9
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	−11.1
Subtotal	−8.2
Adjusted Part 171 Collections Required	$345.6

The FY 2002 final 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 2002 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 2002 final rule. For these licensees, payment will be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule will be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule will be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As noted in the FY 2002 proposed fee rule, the National Mining Association (NMA) filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the existing fee schedules to waive all fees for commercial uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium facilities. The NRC published the NMA's petition in the **Federal Register** for public comment (66 FR 55604; November 2, 2001). Because fees would increase for other licensees should the Commission grant the petition, the NRC invited those that had arguments to place before the Commission that were not submitted in response to the November 2, 2001, **Federal Register** document to do so during the comment period for the FY 2002 proposed fee rule. After careful evaluation of NMA's request and all comments received, the Commission has decided to deny the NMA petition. Additional detail on this petition and the Commission's denial will be published in the **Federal Register** in the near future.

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 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific 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* for at least 90 days after the effective date of the final rule.

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 part 170 fees based on the revised hourly rates. Additionally, the NRC is revising part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The 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 2002 direct program full time equivalents (FTEs) and the FY 2002 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 $156 per hour ($276,345 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 materials program (nuclear materials and nuclear waste programs) is $152 per hour ($269,451 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 2001 final fee rule, the reactor and materials program rates were $150 and $144, respectively. The increases are primarily due to the Government-wide pay increase in FY 2002.

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 materials program (nuclear materials and nuclear waste programs).

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. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2002 BUDGET AUTHORITY INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	$117.0M	$32.2M
Overhead Salaries & Benefits, Program Travel and Other Support	59.2M	15.6M
Allocated Agency Management and Support	106.9M	29.0M
Subtotal	$283.1M	$76.8M
Less offsetting receipts	−0.1M	−0.00M
Total Budget Included in Hourly Rate	$283.0M	$76.8M
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	276,345	269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$156	$152

As shown in Table II, dividing the $283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of $276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program is $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,345) 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 $76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of $269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program is $152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in § 72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the part 72 final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of § 170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of § 170.31 previously referred only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

3. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2002 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the increase in the professional hourly rates from 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. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC 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. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to § 170.21, Footnote 5 to § 170.31, and material in the definition of Special Projects in § 170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in § 170.11, Exemptions.

Therefore, the NRC is deleting Footnote 4 to § 170.21 and Footnote 5 to § 170.31, modifying the language that was in those footnotes, and is adding the revised fee waiver provisions to the Exemption section as § 170.11(a)(1). The NRC is also removing the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in § 170.3. The fee waiver provisions have been revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The modification also clarifies that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in § 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the

types of submissions that meet the fee waiver criteria and those that do not are provided in § 170.11(a)(1).

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

1. Revise the materials and reactor program FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates;

3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and

4. Add to § 170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to § 170.21 and Footnote 5 to § 170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These Footnotes, as well as material in the definition of *Special Projects* in § 170.3 related to certain special requests and reports submitted to NRC for review, have been deleted.

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 2002, amending part 171 to specifically cover combined licenses issued under part 52, clarifying the annual fee exemption provision for reactors, and modifying the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. As explained previously, the final annual fees for this year reflect the Commission's decision that the FY 2002 budgeted costs for the MOX contested hearing should be assessed to all licensees in their annual fees, instead of being charged only to the fuel facility class of licensees. Accordingly, these costs have been treated as a fee adjustment and assessed to all classes of licensees based on their respective percentages of the NRC's budget. The amendments are as follows.

1. Annual Fees

The NRC is establishing rebaselined annual fees for FY 2002. 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 licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees will result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which will have annual fee decreases.

The annual fees in §§ 171.15 and 171.16 are revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is $345.6 million, compared to $331.6 million for FY 2001.

The FY 2002 annual fees reflect an increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 4.9 percent for the power reactor class to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.5 percent for non-power reactors, to approximately 17 percent for the Title II uranium recovery specific licenses. The final annual fees reflect the revised estimates for part 170 collections for FY 2002. The final annual fees have also been adjusted to reflect the Commission's decision that, for FY 2002 only, the budgeted costs for the MOX contested hearing should be assessed to all classes of licensees in their annual fees. For the proposed rule, these costs were assessed only to the fuel facility class of licensees. As a result, the amount assessed to the fuel facility class has decreased by approximately $408,000, while the total amount assessed to most of the other classes of licensees has increased correspondingly. Thus, the amounts assessed to each of the affected classes for the FY 2002 MOX contested hearing costs are as follows: *operating reactors*—$345,000; *spent fuel storage/reactor decommissioning*—$33,000; *non-power reactors*—$400; *fuel facility*—$25,000; *materials users*—$19,000; *transportation*—$5,000; *rare earth facilities*—$1000; and *uranium recovery*—$4,000. Due to rounding, the annual fees for certain individual licensees in some of the affected classes did not change.

Factors affecting the changes to the annual fee amounts from FY 2001 include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a $3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the decreases for the Title II uranium recovery specific licenses are based on a change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licenses. This change is described in detail in section B below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a "Point of Contact." As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, it also results in more of the budgeted costs for that class being recovered through annual fees. However, the change does not result in an increase in total fees paid by these classes. Licensees in the rare earth

facility class, for example, have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased from FY 2001. The increase in annual fees is primarily the result of the change in PM policy which caused a shift in cost recovery from part 170 to part 171. The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III.—FEES FOR THE RARE EARTH CLASS FOR FY 2001 AND FY 2002

[In millions]

	FY 2001	FY 2002	Difference
Estimated part 170 fees	$.81	$.50	−$.31
Total annual fee amount	.09	.21	+.12
Total	.90	.71	−.19

Table IV below shows the rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2002

Class/category of licenses	FY 2002 Annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,849,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,400
High Enriched Uranium Fuel Facility	3,834,000
Low Enriched Uranium Fuel Facility	1,286,000
UF_6 Conversion Facility	551,000
Uranium Mills	77,900
Transportation:	
Users/Fabricators	72,900
Users Only	7,300
Typical Materials Users:	
Radiographers	13,700
Well Loggers	10,000
Gauge Users	2,700
Broad Scope Medical	26,100

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2002 are reduced by about $20.0 million. The total FY 2002 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$8.4
b. Agreement State oversight	8.7
c. Low-level waste disposal generic activities	1.5
d. Site decommissioning management plan activities not recovered under part 170	8.3
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	7.9
b. Licensing and inspection activities associated with other Federal agencies	3.7
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.0
b. Generic decommissioning/reclamation (except those related to power reactors)	8.3
Total surcharge costs	64.4
Less 4 percent of NRC's FY 2002 total budget (minus NWF and General Fund amounts)	−20.0
Total Surcharge Costs to be Recovered	44.4

As shown in Table V, the total surcharge cost allocated to the various classes of licenses for FY 2002 is $44.4 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the 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 licenses. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY 2002 final surcharge costs allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $,M
	Percent	$,M	Percent	$,M	
Operating Power Reactors	74	1.1	79.7	34.1	35.3
Spent Fuel Storage/Reactor Decomm	.....	.....	7.7	3.3	3.3
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.8	2.5	2.6
Materials Users	18	0.3	4.5	1.9	2.2
Transportation	.....	.....	1.3	0.5	0.5
Rare Earth Facilities	.....	.....	0.2	0.1	0.1
Uranium Recovery	.....	.....	0.9	0.4	0.4
Total Surcharge	100	1.5	100.0	42.9	44.4

The budgeted costs allocated to each class of licenses 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 licenses and how the fees are calculated. The work papers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Web site address *http://www.gov/reading-rm/adams.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 2002 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 2002 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 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 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 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule will be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment will be due on the date of the invoice.

A. Fuel Facilities

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately $17.7 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). 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 budgeted costs included in the annual fee will be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

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 basis 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 numeric 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 licenses are summarized in Table VII below.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF_6 Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the $17.7 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 VIII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2002 annual fee
High Enriched Uranium Fuel	$3,834,000
Uranium Enrichment	2,387,000
Low Enriched Uranium	1,286,000
UF_6 Conversion	551,000
Limited Operations Facility	505,000
Others	367,000

B. Uranium Recovery Facilities

The FY 2002 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.7 million. Based on the following change in the way NRC allocates these costs, approximately $1.0 million of this amount will be assessed to DOE. The remaining $0.7 million will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

The NRC has adopted the revised methodology for allocating uranium recovery budgeted costs to be recovered through annual fees among the two major types of programs in the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's UMTRCA Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE has not previously been assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) were previously assessed the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined that it is appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the methodology allocates the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This results in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs are to be assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$377,232
50% of generic/other uranium recovery budgeted costs	491,173
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for DOE	$1,057,914
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	$491,173
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II Specific Licenses	$680,682

The costs allocated to the various categories of Title II specific licensees are 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 Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (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);

(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 specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Level of benefit		
		Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	FY 2002 annual fee
Class I (conventional mills)	$77,900
Class II (solution mining)	65,200
11e.(2) disposal	48,000
11e.(2) disposal incidental to existing tailings sites	7,600

In the FY 2001 final rule (66 FR 32478, June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

C. Power Reactors

The approximately $271.4 million in budgeted costs to be recovered through FY 2002 annual fees assessed to the power reactor class is divided equally among the 104 power reactors licensed to operate. This results in a FY 2002 annual fee of $2,610,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2002 spent fuel storage/reactor decommissioning annual fee of $239,000. This results in a total FY 2002 annual fee of $2,849,000 for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately $28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The cost is divided equally among the 121 licensees, resulting in a FY 2002 annual fee of $239,000 per license.

E. Non-Power Reactors

Approximately $285,400 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2002. This amount is divided equally among the four non-power reactors subject to annual fees. This results in a FY 2002 annual fee of $71,400 for each licensee.

F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately $205,900 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 a FY 2002 annual fee of $68,600 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

G. Materials Users

To equitably and fairly allocate the $25.0 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 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 licenses 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 licenses. The annual fee for these categories of licenses 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 $17.4 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately $5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately $126,900 is allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.9 million in surcharge costs allocated to the materials user class of licenses 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).

1. Transportation

Of the approximately $4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.4 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 $3.4 million, approximately 25 percent is allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent is allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $7,300 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $72,900 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Part 52 Combined Licenses

The NRC is revising part 171 to: authorize assessment of annual fees for holders of combined licenses issued under part 52; clarify that the annual fees will be assessed for each license, and not for each unit; and establish when assessment of annual fees will begin.

Part 171 previously covered annual fees for part 50 licenses, but did not specifically cover annual fees for combined licenses issued under part 52. Additionally, neither part 52 nor part 171 addressed when NRC would begin to assess an annual fee to a part 52 license holder. The NRC is revising § 171.3 "Scope" to specify that the annual fee regulations also apply to any person holding a combined license issued under part 52.

The annual fees for a part 52 combined license will be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Previously, § 171.15(a) provided that reactor licensees shall pay an annual fee "* * * for each unit for each license held * * *". It is the agency's present practice to charge annual fees per license, and the NRC is revising § 171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not establishing a specific annual fee category or amount for part 52 combined licenses because there are no existing combined licenses issued under part 52. However, the NRC is making these changes so potential applicants for a part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying § 171.11(c) to clarify that the annual fee exemption provision applies only to reactors licensed to operate. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986), which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with "operating" licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in § 171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for § 171.11, the NRC stated that the added exemption section "* * * provides that the holder of a license to 'operate' a power reactor * * * may apply to the Commission for partial relief from annual fee[s]."

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington, DC 20555–0001 in accordance with § 171.9.

4. Administrative Amendment

The NRC is modifying Category 1.B. of § 171.16(d) to specifically include licenses issued under part 72 for reactor-related GTCC waste. This is an administrative change that is being made only to ensure consistency with the description for fee category 1.B. of § 170.31 as described in A. above. The NRC is not establishing an annual fee for this category of license.

In summary, the NRC has—

1. Established rebaselined annual fees for FY 2002;

2. Modified part 171 to specifically authorize assessment of annual fees for part 52 combined licenses;

3. Clarified that the annual fee exemption provision in § 171.11(c) applies only to reactors licensed to operate;

4. Made an administrative change to fee category 1.B. of § 171.16(d) to be consistent with the change to category 1.B. of § 170.31.

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 96 percent of its budget authority in FY 2002 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 does not contain 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 by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2002 is 96 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2002 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, provide that—

(1) The annual fees be based on approximately 96 percent of the Commission's FY 2002 budget of $559.1 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, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues.

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 96 percent of its FY 2002 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 2002. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include 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 2002.

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 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; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

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

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

Authority: 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).

2. Section 170.3 is amended by revising the definition of *Special projects* and adding in alphabetical order, the definition for *Greater than Class C Waste* or *GTCC Waste* to read as follows:

§ 170.3 Definitions.

* * * * *

Greater than Class C Waste or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

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.

* * * * *

3. In § 170.11, paragraph (a)(1) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A special project that is a request/report submitted to the NRC—

(i) 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;

(ii) 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

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

(A) This fee exemption applies only when:

(*1*) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (*e.g.*, rules, regulations, guides and policy statements); and

(*2*) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(*1*) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the

waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 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:

(a) Reactor Program (§ 170.21 Activities).	$156 per hour.
(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$152 per hour.

5. In § 170.21, the introductory text, and in the table, Category J, Category K, and footnotes 1, 2, and 3 to the table are revised and footnote 4 is removed 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]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
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	$9,900
Amendment	$9,900
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8)	
Application—new license	$5,800
Amendment	$5,800
3. Application for export of components requiring foreign government assurances only	
Application—new license	$1,800
Amendment	$1,800
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances	
Application—new license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review	
Amendment	$230

[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.*, 10 CFR 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 June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[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.

6. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	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 and/or reactor-related Greater than Class C (GTCC) waste 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	$700
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	$1,400
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	$170
C. All other source material licenses:	
Application	$6,000
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	$7,100
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	$2,300
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 § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$9,200
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 § 170.11(a)(4).	
Application	$2,600
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	$1,800
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	$3,600
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.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
Application	$8,500
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	$2,400
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	$3,600
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. 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	$1,100
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	$620
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	$6,000
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:	
Application	$2,600
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	$2,700
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$4,400
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,400
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
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	$1,800
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	$2,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$5,900
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	$12,100
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	$6,600
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:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
Application	$4,700
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	$2,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$350
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	$5,600
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	$5,600
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,700
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	$580
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	$680
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/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 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	$9,900
Amendment	$9,900
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	$5,800
Amendment	$5,800
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,800
Amendment	$1,800
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,200
Amendment	$1,200
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$230
16. Reciprocity:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
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, generally licensed device registrations, 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 applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[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.

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

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

Authority: sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, 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).

8. Section 171.3 is revised to read as follows:

§ 171.3. Scope.

The regulations in this part apply to any person holding a license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In § 171.5, the definition of *Greater than Class C Waste* or *GTCC Waste* is added in alphabetical order to read as follows:

§ 171.5 Definitions.

* * * * *

Greater than Class C Waste or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

10. In § 171.11, paragraph (c) is revised to read as follows:

§ 171.11 Exemptions.

* * * * *

(c) An exemption for reactors licensed to operate may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

* * * * *

11. Section 171.15 is revised to read as follows:

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

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor

license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2002 annual fee for power reactors licensed to operate is $2,849,000.

(2) The FY 2002 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 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 2002 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 $239,000.

(2) The FY 2002 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 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 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 2002 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (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 conducted 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, 5 U.S.C. 601 *et seq.*

(2) The total FY 2002 surcharge allocated to the operating power reactor class of licenses is approximately $35.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2002 operating power reactor surcharge to be assessed to each power reactor licensed to operate is approximately $339,400. This amount is calculated by dividing the total operating power reactor surcharge ($35.3 million) by the number of power reactors licensed to operate (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is approximately $3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each power reactor licensed to operate, 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 $27,300. 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 2002 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	$71,400
Test reactor	71,400

12. 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 the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$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 web site at

http://www.nrc.gov. For licensees who cannot access the NRC's web site, NRC Form 526 may be obtained 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. The form can also be obtained 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 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section. The FY 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$3,834,000
Nuclear Fuel Services SNM–124	3,834,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
General Electric Company SNM–1097	1,286,000
Siemens Nuclear Power SNM–1227	1,286,000
Westinghouse Electric Company SNM–1107	1,286,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations: Framatome ANP SNM–1168	505,000
(b) All Others: General Electric SNM–960	367,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
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	1,500
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,600
E. Licenses or certificates for the operation of a uranium enrichment facility	2,387,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	551,000
(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]	77,900
Class II facilities [4]	65,200
Other facilities [4]	68,600
(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)	48,000
(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)	7,600
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	750
C. All other source material licenses	12,200
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	22,400
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	5,700
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 § 171.11(a)(1). These licenses are covered by fee Category 3D	14,000
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 § 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	4,500
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)	3,600

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
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	6,500
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	23,100
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	3,700
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	5,200
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	2,400
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	1,600
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	11,200
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	4,800
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	5,300
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	13,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,700
Q. Registration of devices generally licensed pursuant to 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	10,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,000
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	10,000
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	19,100
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	15,400
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]	26,100
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]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
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	6,700
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	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,000
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	690
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 part 71 of this chapter.	
Users and Fabricators	72,900
Users	7,300
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 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	283,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,370,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,058,000

[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 licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed activities entirely by September 30, 2001. 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 § 171.15(c).

[12] See § 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 licenses; *e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (*e.g.*, reviews and inspections 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, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 13th day of June, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Draft 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 2.810). 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 by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. In addition, for FY 2002, $36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately $479.5 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the 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 FY 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 licenses, the annual fee base would be recalculated.

In FY 2001, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 2001.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2002. Rebaselining fees results in increased annual fees for a majority of the categories of licenses, and decreased 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 2002 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 final 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 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

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.

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.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. 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, in developing each of its fee rules since FY 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 FY 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 FY 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 FY 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, the maximum small entity annual fee 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.

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.

As stated in the FY 2001 Regulatory Flexibility Analysis, (66 FR 32452; June 14, 2001), the NRC will 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 (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at $2,300, and the lower tier small entity annual fee will remain at $500. 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 96 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 2001 fee rule remain valid for FY 2002.

Attachment 1 to Appendix A

U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 2002

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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 guide has been prepared to assist NRC material licensees in complying with the FY 2002 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 2002 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. This form can be accessed on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained 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 organizations*—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's regulations (13 CFR part 121).

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 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 and 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

[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.

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can 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 Web site, NRC Form 526 may be obtained 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.

[FR Doc. 02-15591 Filed 6-21-02; 8:45 am]

BILLING CODE 7590-01-P