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Glenda's Comments 5/30/02

[7590-01-P]

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: (Insert 60 days after publication in the Federal Register).

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 Document Room NUREG-1100, Volume 18, "Budget Estimates and ar 2003 (February 2002)," which discusses the NRC's budget for ies to be performed in each strategic arena. The extensive ublic 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.

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B. Specific Part 170 Issues.

1. Hourly Rates.

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."

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One 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 ~~noted~~ stated that fees for services present a serious budgetary problem for industry organizations. According to the commenter, these organizations purportedly 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 ~~should be~~ 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.

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. 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, however, nor should it be for purposes of granting or denying 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 their 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 will continue to address exemption requests for first-of-a-kind licensing actions on a case-by-case basis under §170.11(b).

The NRC believes the modifications to the 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. We presume these clarifications will better inform the industry , so they will not request fee waivers for those types of 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 whatever 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

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 estimated total 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 dollars, 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 §2.810, NRC size standards

~~Based on the~~ The NRC uses the Small Business Administration's (SBA) definition of receipts. ~~Based on the SBA's~~ Based on the SBA definition, ~~guidelines~~, revenue from all sources, not solely receipts from NRC licensed activities, are considered in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards. The NRC does not have the data available, nor the financial expertise to evaluate each licensee's business records and determine the source of its revenues. Instead, the NRC assesses its fees based on the license authorization.

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.

2. 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 and the revised Project Manager (PM) assignment policy, 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 state 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. Moreover, 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

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 repeatedly 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 source 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.

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.

3. Annual Fees for Power Reactor Licensees

Comment. Three commenters addressed the proposed annual fees for the power reactor class. Two 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 in 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 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 required in order for NRC to met the statutory requirement of OBRA-90, as amended, that almost all of NRC's budget be recovered through IOAA and annual fees. 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

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support NRC operating licensees and others. To address fairness and equity concerns raised by 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 NRC to charge licensees for costs that are not directly related to them or to their class will be significantly reduced ~~eliminated, or almost eliminated,~~ by FY 2005.

The agency workpapers 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 workpapers 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.

4. 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 ~~required~~ is requirement for additional security upgrades for ~~its~~ the facility since the September 11, 2001, terrorist attacks, placing 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 ~~classes~~ 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.

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. Another comment 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 safety 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 $479.4 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 $26.1 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 $477.7 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 $123.9 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 $345.7 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	x 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	- 123.9
Part 171 Fee Collections Required	$353.9
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	$345.7

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 NMA filed a petition ~~before the Commission~~ 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. ~~In response,~~ the NRC ~~solicited public comment by~~ publishing the NMA's petition in the Federal Register (66 FR 55604; November 2, 2001), ~~and allowed for additional comments during the FY 2002 proposed fee rule comment period. The NRC received a total of 14 comments on this issue.~~ The Commission is currently evaluating the public comments received, and plans to make a decision on the NMA petition in the near future. ~~Additional detail on this petition and~~ the Commission's decision will be published in a forthcoming issue of the Federal Register.

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 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.

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. 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 $345.7 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 4.8 percent for the power reactor class to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses. The final FY 2002 annual fees for the operating power reactor and fuel facility classes, and for certain categories of materials users are less than the proposed annual fees based on revised estimates for Part 170 collections for FY 2002.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent from FY 2001 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 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, ~~would~~ 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

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

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)	$2,845,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,300
High Enriched Uranium Fuel Facility	3,922,000

Low Enriched Uranium Fuel Facility	1,315,000
UF_6 Conversion Facility	564,000
Uranium Mills	77,700
Transportation:	
Users/Fabricators	72,800
Users Only	7,300
Typical Materials Users:	
Radiographers	13,600
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 ~~will be~~ 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
	Percent	$,M	Percent	$,M	$,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 workpapers 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 workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address http://www.gov/reading-rm/adams.html. For a period of 90 days after the effective date of this final rule, the workpapers 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 $18.1 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	Effort factors 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 $18.1 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	$3,922,000
Uranium Enrichment	2,442,000
Low Enriched Uranium	1,315,000
UF_6 Conversion	564,000
Limited Operations Facility	517,000
Others	376,000

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

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	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for DOE	$ 1,056,000

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50% of generic/other uranium recovery budgeted costs	$ 489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II Specific Licenses	$ 678,768

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

		Level of benefit		
	Number of	Category	Total weight	
Facility type	facilities	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)	$ 77,700
Class II (solution mining)	65,100
11e.(2) disposal	47,900
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 $271.1 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 $2,606,000 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 $2,845,000 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 will be divided equally among the 121 licensees, resulting in a FY 2002 annual fee of $239,000 per licensee.

E. Non-power Reactors

Approximately $285,200 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 $71,300 for each licensee.

F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately $205,300 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 $68,400 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 x [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier x (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).

H. 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 $72,800 for each of the holders of quality assurance plans that authorize use and design/fabrication.

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

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

Category of materials licenses and type of fees[1]	Fee[2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
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.

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:

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:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.

Application $1,400

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[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

(c) An exemption for ~~operating~~ reactors licensed to operate under this provision 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:

<u>§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.</u>

(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 each ~~operating~~ power reactor licensed to operate is $2,8~~4~~7,000.

(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 ~~$241,000.~~ $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	$71,300
Test reactor	$71,300

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

<u>§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</u>.

* * * * *

(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

(a) Strategic Special Nuclear Material:

Babcock & Wilcox

SNM-42 ..... $3,922,000

Nuclear Fuel Services

SNM-124 ..... $3,922,000

(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:

General Electric Company

SNM-1097 ..... $1,315,000

Siemens Nuclear Power

SNM-1227 ..... $1,315,000

Westinghouse Electric Company

SNM-1107 ..... $1,315,000

(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 ..... $517,000

(b) All Others:

General Electric SNM-960 ..... $376,000

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) ..... N/A[11]

C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers $1,500

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 $2,442,000

2. Source material:

A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride $564,000

(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] $77,700

Class II facilities[4] $65,100

Other facilities[4] $68,400

(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) $47,900

(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

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 $5,200

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 $13,600

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 31of this chapter . . . . . N/A[13]

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 . . . . . N/A[5]

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 ..... ~~N/A[5]~~

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

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 ..... N/A[6]

Other Casks ..... N/A[6]

B. Quality assurance program approvals issued under part 71 of this chapter.

Users and Fabricators $72,800

Users $7,300

11. Standardized spent fuel facilities ..... N/A[6]

12. Special Projects ..... N/A[6]

13. A. Spent fuel storage cask Certificate of Compliance ..... N/A[6]

    B. General licenses for storage of spent fuel under 10 CFR 72.210 ..... N/A[12]

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 ..... N/A[7]

15. Import and Export licenses ..... N/A[8]

16. Reciprocity ..... N/A[8]

17. Master materials licenses of broad scope issued to Government agencies $283,000

18. Department of Energy:

    A. Certificates of Compliance ..... $1,368,000[10]

    B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities $1,056,000

[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 _____ day of _____, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

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.