

1/17/05

Tammy,
Please see my comments
at marked pages. Let's discuss if you
have questions. Thanks,

[7590-01-P]



NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH61

Revision of Fee Schedules; Fee Recovery for FY 2005

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2005, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2005 is approximately \$540.7 million.

DATES: The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90

(H.R.6) was introduced that would have amended OBRA-90 to remove many homeland security costs from the fee base (except homeland security costs associated with fingerprinting, background checks, and security inspections). In its August 29, 2003, letter to the House Committee on Energy and Commerce, the Commission supported the fee recovery provisions of this bill. The House approved the Energy Policy Bill produced by the conference committee, and the Senate began debate on the conference committee report. However, as of the date of this proposed rule, no further action has been taken by the Senate or House on this bill. A successor to H.R.6, S.2095, was subsequently introduced in Congress, which also would remove many homeland security costs from the fee base. The NRC continues to support legislative efforts to remove homeland security costs from the fee base.

In this subsequent bill,

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

II. Proposed Action

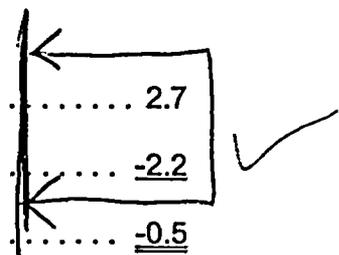
The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2005 budget authority less the appropriations received from

Table I summarizes the budget and fee recovery amounts for FY 2005. 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 2005

[Dollars in millions]

Total Budget Authority	\$669.3
Less NWF	<u>-68.5</u>
Balance	\$600.8
Fee Recovery Rate for FY 2005	<u>x 90.0%</u>
Total Amount to be Recovered For FY 2005	\$540.7
Less Carryover from FY 2004	<u>-2.2</u>
Amount to be Recovered Through Fees and Other Receipts	\$538.5
Less Estimated Part 170 Fees and Other Receipts	<u>-163.1</u>
Part 171 Fee Collections Required	\$375.4
Part 171 Billing Adjustments	
Unpaid FY 2005 Invoices (estimated)	2.7
Less Payments Received in FY 2005 for Prior Year Invoices (estimated)	<u>-2.2</u>
Subtotal	<u>-0.5</u>
Adjusted Part 171 Collections Required	\$374.9



The FY 2005 final fee rule will be a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2005 would become effective 60 days after publication of the final rule in the *Federal Register*. The

full cost

also applicable to flat fees
OK

would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is \$198 per hour (\$285,923 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2004 final fee rule, the reactor and materials program rates were \$157 and \$156, respectively.

full cost

The increase to the reactor and the materials program rates is primarily due to the NRC's use of a revised estimate of the number of direct hours per FTE in calculating these rates. As described in further detail below, the NRC currently assumes 1,776 hours per direct FTE are available for direct program work, while the new hourly rate assumes 1,446 hours per direct FTE are available for direct program work. Because the NRC's hourly rates are calculated by dividing the total annual costs of a direct FTE by average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculation, the higher the hourly rates. The NRC is proposing to revise its estimate of direct hours per FTE to more accurately reflect the NRC's costs of providing part 170 services, which would allow the NRC to more fully recover the costs of these services through part 170 fees. Because costs not recovered under part 170 are recovered through part 171 annual fees, the increase in total part 170 fees (caused by the hourly rate increase) would result in a reduction to total annual fees of the same amount. As such, this hourly rate increase would have no effect on the NRC's total fee recovery amount, but would shift some fee recovery from part 171 annual fees to part 170 fees for licensee-specific services. (Because revenue from these increased part 170 fees would not be received by the NRC until FY 2006—in light of the effective date of the final rule and the NRC's regular billing cycle—the reduction in annual fees from this change would not occur until FY 2006.)

Previously, the NRC used an estimate of 1,776 hours per FTE to calculate the reactor and materials program hourly rates, based on guidance provided by the Office of Management and Budget (OMB) in Circular A-76, "Performance of Commercial Activities." However, this Circular regards assumptions to be used to estimate personnel costs for the competition of commercial activities, and does not provide guidance about assumptions to be used for purposes of fee calculation. (OMB's Circular A-25, "User Charges," also does not specifically address the number of hours to assume per FTE in calculating fees, but does emphasize that agency fees should reflect the full cost of providing services to identifiable beneficiaries.) The 1,776 figure from Circular A-76 includes time for administrative, training, and other activities ~~that~~ a direct program FTE may perform that, while relevant to consider for certain costing purposes, would more accurately be considered overhead. Therefore, ^{this figure} it should not be assumed to be ^{intended} 'direct' time for purposes of calculating a rate per hour of direct activities, which is the purpose of the NRC's hourly rates. While the 1,776 figure would be a useful fee calculation input were more detailed information not available, the NRC has been collecting more detailed information from its time and labor system, which is now ^{since} an established source of data ^{for} ~~on the NRC's~~ ^{the agency's} employee work activities. The NRC has performed a review of its time and labor data, which indicates that 1,446 hours per FTE more accurately reflects the time expended by NRC program employees performing activities directly associated with the programmatic mission of the NRC. The use of 1,446 hours per FTE is the primary reason for the higher proposed FY 2005 hourly rates. The Government-wide pay raise ^{of} is another reason for the proposed increase in the hourly rates. ^{Blue book #s assumed 1.5%}

The NRC recognizes that the proposed increase to the hourly rates is more significant than those hourly rate changes that have occurred in previous years. However, the NRC believes that this increase is justified in light of the review of the ~~NRC's~~ ^{Agency's} time and labor data,

which showed that NRC direct employees spend, on average, 1,446 hours per year on activities directly associated with the programmatic mission of the NRC. The NRC believes that the use of 1,446 hours per FTE is more appropriate for the purpose of the NRC's fee calculation than other estimates of hours per FTE used for different agency financial purposes. Additionally, the NRC maintains that the use of 1,446 hours per FTE results in hourly rates that more accurately reflect the full cost of providing services under part 170. The NRC believes that this revised estimate of hours per FTE is consistent with guidance provided in OMB Circular A-25 on recovering the full cost of services provided to identifiable recipients; and also supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees.

What above mention that for budgetary purpose NRC use 1,446. That, it would then be a consistent w/ budgeting planning fig

Higher hourly rates would result in (1) increased full cost fees for licensing and inspection activities, and (2) increased materials flat fees for license applications. As noted, total part 171 annual fees would decrease by the same amount as the increase in total part 170 fees. This shift from part 171 to part 170 would be greater for those fee classes with a higher proportion of part 170 work to part 171 work activities (e.g., reactors, uranium recovery, rare earth). Higher hourly rates would also result in some licensees, such as those ~~licensees~~ ^{operating power} for whom the NRC performs fewer hours of part 170 services than the average licensee in that class, paying less total (parts 170 and part 171) fees than if this change were not enacted. Similarly, licensees for which the NRC performs more hours of part 170 services would pay more in total fees under the proposed higher hourly rates.

Need to bet. explain this. Confus. as written.

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). All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. 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 recovered through part 170 fees. *Is this correct as written? I thought contract costs were "passed-through" directly to the licensee -- but not specifically as "part 170" fees*

b. All non-program direct costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's 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 2005 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	\$150.5M	\$39.0M
Overhead Salaries & Benefits,		
Program Travel and Other Support	77.5M	17.8M
Allocated Agency Management and Support	<u>126.1M</u>	<u>31.4M</u>
Subtotal	354.1M	88.3M
Less Offsetting Receipts	<u>-0.1M</u>	<u>-0.00M</u>
Total Budget Included in Hourly Rate	\$354.0M	\$88.3M

materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some ^{fee} categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2003 (68 FR 36714; June 18, 2003). Thus, the revised average professional staff hours in this proposed fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2003.

As a result of the biennial review, the proposed licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for five of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 20 fee categories. The average time for ^{new license} applications ^{for} new export and import licenses and for amendments ~~to export and import licenses~~ remained the same for each of the five fee categories in §§170.21 and 170.31.

The proposed licensing fees for fee categories K.1 through K.5 of §170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of §170.31 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed materials program professional hourly rate for FY 2005. As previously noted, the proposed higher hourly rate of \$198 for the materials program is a key reason for the increases in the proposed licensing fees.

for the materials users class many within all mat program

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the proposed fee per registration is \$630, compared to the current fee of \$610. The proposed fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2005 materials program FTE rate. This increase of \$20 to the current fee is based on ^{cost data collected} ~~experience with the registrations to date, which indicates that the average cost per registrant is slightly higher than originally estimated.~~ The next biennial review of the registration fee will be included in the FY 2007 fee rule; however, the registration fee may change in the FY 2006 fee rule if there is a change to the materials program FTE rate for FY 2006.

The amounts of the materials licensing "flat" fees are rounded as follows: fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

3. Charging Fees for Licensee-Specific Activities Resulting from Most Orders

The NRC proposes to amend §§170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties. Currently, part 170 fees are not assessed for amendments or other licensee-specific activities resulting from the requirements of Commission orders because in cases where the order proposes the imposition of a civil penalty, the assessment of additional costs could be viewed as augmenting the amount of the civil penalty and could discourage licensees from contesting proposed enforcement actions. However, in recent years, the NRC's

use of orders to impose additional requirements for safety or security reasons has increased. For example, subsequent to the September 11, 2001, terrorist attacks, the Commission imposed security requirements on various groups of licensees through orders. These orders resulted in the NRC's review of licensee-specific amendments and other activities that normally would have been billable under part 170, except that they were associated with orders.

Given the changing regulatory environment and the extent of licensee-specific activities that are resulting from orders unrelated to civil penalties, the NRC is proposing that its regulations be revised to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not proposing to change cost recovery ^{for} of the development of these orders; these costs would continue to be recovered under part 171.

4. Charging Fees for Unlicensed Sites in Decommissioning

The NRC currently does not charge part 170 fees to owners or operators of unlicensed sites in decommissioning. However, the NRC does perform work related to the decommissioning of these sites that could be recoverable through part 170 fees because this work is associated with an identifiable beneficiary. These costs are currently recovered through either a surcharge that is included in licensees' annual fees or through taxpayer-funded appropriations. ^{under IOAA} Recovering the site-specific decommissioning costs associated with these unlicensed sites, though part 170 fees, is consistent ^{other NRC} with the full cost recovery provisions of IOAA and the OMB's guidance in Circular A-25, "User Charges," and the NRC believes this change would enhance the fairness and equity of its fee schedule. Therefore, the NRC is proposing to add a new category (14B) to 'Schedule of Materials Fees' at \$170.31 that would provide for the assessment of part 170 fees to recover the full cost of site-specific

decommissioning activities for unlicensed sites. (The current Category 14 at §170.31 would be renumbered as Category 14A.) Section 170.2 would also be revised to expand the scope of part 170 to cover an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

} Do we need to explain "legally" (OGC) how/why we can assess fees to sites that don't have an NRC license?

5. Fee Waivers

Under §170.11(a)(1)(iii), part 170 fees are not required for a report/request that has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations. The NRC proposes to clarify this section by stating that this fee exemption applies only when it is requested from, and granted by, the Chief Financial Officer (CFO) in writing. While this is consistent with current practice in requesting and granting these fee waivers, the NRC believes this revision would enhance clear communication about implementation of this fee waiver provision.

6. Full Cost Recovery of Project Manager Time

The FY 1999 final fee rule (64 FR 31448; June 10, 1999) expanded the scope of part 170 fee assessments to include full cost recovery for project managers assigned to a specific plant or facility. Under this policy at §170.12(b)(iv), most project managers' time, excluding leave and time spent on generic activities such as rulemaking, is recovered through part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. The NRC will begin applying this policy to license renewal project managers as of the effective date of this final rule. Although the NRC does not currently apply this full cost recovery policy to license renewal project managers, this change does not require a modification to its regulations.

proposed (not proposed)
18

Rather, given the increase in license renewal activities since 1999, when full cost recovery for project managers was enacted, the NRC recognizes that the existing policy should ^{also} apply to license renewal project managers. However, because this is a change in the application of existing policy, the NRC is notifying licensees of this change through this proposed rule and will not implement it until the effective date of the final rule.

7. Administrative Amendments

The NRC is proposing to modify ^{the} number or letter identifiers associated with ~~the~~ fee categories listed in §170.31, as well as make other minor administrative changes, so that the fee categories under part 170 are consistent with those used in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at §171.16(d). While the fee categories are, for the most part, consistent between the fee tables at §§170.31 and 171.16(d), in some instances they are slightly different. This change would enhance the NRC's ability to track parts 170 and 171 fees for license categories and simplify communication to licensees about applicable fee categories.

In summary, the NRC is proposing the following changes under 10 CFR part 170 --

1. Establish revised materials and reactor programs FTE hourly rates to better reflect the full cost of providing part 170 services;

2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;

3. Revise §§170.21 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties;

4. Revise §§170.2 and 170.31 to provide that part 170 fees will be assessed for any licensee-specific activities associated with unlicensed sites in decommissioning conducted under NRC oversight;

5. Revise §170.11 to clarify that certain fee waivers need to be requested ~~to~~, and granted ~~from~~, the CFO in writing;

*from } EOL
OK changed
?*

6. Apply the existing policy at §170.12 of full cost recovery for project managers to *include* license renewal project managers; and,

7. Make minor administrative changes ~~to~~ in §170.31 to enhance consistency in the identification of fee categories between parts 170 and 171. ✓

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 proposes to revise the annual fees for FY 2005 to reflect the FY 2005 budget and changes in the number of NRC licensees (including those resulting from the transfer of regulatory authority to Agreement States), eliminate 'size of reactor' as a reason for granting annual fee exemptions, and make certain administrative amendments. The proposed amendments are as follow:

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2005. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32218; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined 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 2004. Based on the change in the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in decreased annual fees compared to FY 2004 for five classes of licenses (power ^{operating} reactors, test and research reactors, spent fuel storage/reactor decommissioning, rare earth

mills, and transportation), and increased annual fees for two classes (fuel facilities and uranium recovery). For the materials users class, ~~two~~ ^{two} categories (sub-classes) of licenses would have decreased annual fees while the remainder would have increased annual fees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2005 to recover approximately 90 percent of the NRC's FY 2005 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2005 is \$374.9 million, compared to \$389.9 million for FY 2004.

Why don't we do the same under Part 170 discussion We could also explain how we can up our Part 170 projection

Within the eight fee classes of licensees that pay annual fees, the FY 2005 annual fees would increase for many categories of licenses, decrease for others, and remain the same in two instances. The increases in annual fees range from approximately two percent for a master materials license to approximately 268 percent for registrations issued for device or product safety evaluations. The proposed decreases in annual fees range from approximately six percent for operating power reactors to approximately 42 percent for transportation approvals (users only) category. (Rare earth mills represent a license class, rather than license category or sub-class; their proposed annual fees decrease by over 55 percent.)

↓ add sending to pg. 6

Factors affecting the changes to the annual fee amounts include: adjustments in budgeted costs for the different classes of licenses; the reduction in the fee recovery rate from 92 percent for FY 2004 to 90 percent for FY 2005; the estimated part 170 collections for the various classes of licenses; the decrease in the number of licensees for certain categories of licenses; and the

\$2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 final rule was published (i.e., ^{this} ~~there was~~ carryover from FY 2004 ^{was used} to reduce the FY 2005 fees).

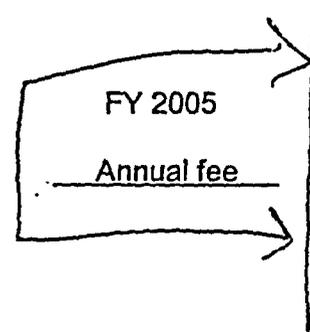
Table III below shows the proposed rebaselined annual fees for FY 2005 for a representative list of categories of licenses.

Would it not be more effective to show below what % ↑ or ↓ fees went from previous yr.?

show values?

TABLE III. - REBASELINED ANNUAL FEES FOR FY 2005

Class/category of licenses



↓ (6%)	Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,067,000
↑ (X%)	Spent Fuel Storage/Reactor Decommissioning	\$165,000
	Test and Research Reactors (Nonpower Reactors)	\$54,400
	High Enriched Uranium Fuel Facility	\$6,234,000
	Low Enriched Uranium Fuel Facility	\$1,867,000
	UF ₆ Conversion Facility	\$800,000
	Conventional Mills	\$27,700
	Transportation:	
	Users/Fabricators	\$80,200
	Users Only	\$4,300

Typical Materials Users:

Radiographers	\$12,800
Well Loggers	\$4,100
Gauge Users (Category 3P)	\$2,500
Broad Scope Medical	\$27,300

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 Development 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 2005 will be reduced by approximately \$60.1 million. The total FY 2005 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV. - SURCHARGE COSTS

[Dollars in millions]

<u>Category of costs</u>	<u>FY 2005 budgeted costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	

10%
 Less percent of NRC's FY 2005 total budget (less NWF) -60.6

Total Surcharge Costs to be Recovered \$1.5

As shown in Table IV, \$1.5 million would be the total surcharge cost allocated to the various classes of licenses for FY 2005. The NRC would continue to allocate the surcharge costs to each class of licenses based on the percent of the budget for that fee class compared to the NRC's total budget. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The proposed FY 2005 surcharge costs allocated to each class of licenses 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.

that was not addressed by the 10% reduction

these

Separately, the NRC would continue to allocate the low-level waste (LLW) surcharge costs based on the volume of LLW disposal of certain classes of licenses. For FY 2005, the LLW surcharge costs are \$2.8 million.

TABLE V. - ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	<u>Percent</u>	<u>\$M</u>	<u>Percent</u>	<u>\$M</u>	
Operating Power	74	2.1	82.4	1.2	3.3
Reactors					
Spent Fuel Storage/ Reactor Decomm.	---	---	4.7	0.1	0.1
Nonpower Reactors	---	---	0.1	0	0
Fuel Facilities	8	0.2	7.2	0.1	0.3
Materials Users	18	0.5	4.0	0.1	0.6

Transportation	---	---	1.0	0	0
Rare Earth Facilities	---	---	0.2	0	0
Uranium Recovery	---	---	<u>0.4</u>	<u>0</u>	<u>0</u>
Total Surcharge	100	2.8	100.0	1.5	4.3

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 proposed 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 Electronic Reading Room on the Internet at Website address <http://www.nrc.gov/reading-rm/adams.html>. During the 30-day public comment period, 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.

a. Fuel Facilities

The FY 2005 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately \$27.6 million compared to \$21.6 million in FY 2004. The annual fee increase is partly attributable to the decrease in estimated part 170 revenue for the fuel facility class compared to FY 2004. This FY 2005 decrease results from part 170 fuel facilities' revenue in FY 2004 including a one-time adjustment (increase) for revenue to account for fuel facilities fees that were improperly coded and not factored into the fee calculations for FY 2001, FY 2002, and FY 2003, as discussed in the FY 2004 final fee rule. The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is

\$2.1M
(i.e., costs associated with MX project)
fuel

use FY04 language

effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VI.

TABLE VI. - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility type</u>	Number of <u>facilities</u>	<u>Effort factors</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel	2	101 (38.0)	86 (58.1)
Enrichment	2	70 (26.3)	34 (23.0)
Low Enriched Uranium Fuel	3	66 (24.8)	18 (12.2)
UF ₆ Conversion	1	12 (4.5)	0 (0)
Limited Operations Facility	1	8 (3.0)	3 (2.0)
Others	2	9 (3.4)	7 (4.7)

Applying these factors to the safety, safeguards, and surcharge components of the \$27.6 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VII.

TABLE VII. - ANNUAL FEES FOR FUEL FACILITIES

TABLE VIII. - WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

<u>Facility type</u>	Number of <u>facilities</u>	Category <u>weight</u>	<u>Level of benefit</u>	
			<u>Value</u>	<u>Percent</u>
Class I (conventional mills)	1	800	800	20
Class II (solution mining)	3	800	2,400	60
11e.(2) disposal	0	0	0	0
11e.(2) disposal incidental to existing tailings sites	1	800	800	20

(?) Is this supposed to be \$138,579?

Applying these factors to the approximately \$677,000 in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE IX. - ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

<u>Facility type</u>	<u>FY 2005 annual fee</u>
Class I (conventional mills)	\$27,700
Class II (solution mining)	27,700
11e.(2) disposal	N/A
11e.(2) disposal incidental to existing tailings sites	27,700

Note because there are no longer any 11e.(2) disposal facilities under the NRC's regulatory jurisdiction, the NRC has not allocated any budgeted resources to, and therefore has

not established an annual fee for that fee category. If NRC issues a license for this fee category, the Commission will consider the annual fee, to be established for this license.

then
appropriate
in the future *establish* } *rule text*

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised §171.19 to establish a quarterly billing schedule for 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 2005 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2005 final fee rule is published. 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).

Operating (?)
c. Power Reactors ✓

The approximately \$301.8 million in budgeted costs to be recovered through FY 2005 annual fees assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2005 annual fee of \$2,902,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2005 spent fuel storage/reactor decommissioning annual fee of \$165,000. This results in a total FY 2005 annual fee of \$3,067,000 for each power reactor licensed to operate.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2005, budgeted costs of approximately \$20 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 costs are divided equally among the 121 licensees, resulting in a FY 2005 annual fee of \$165,000 per licensee.

e. Test and Research Reactors (Nonpower Reactors)

Approximately \$217,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2005. This amount is divided equally among the four test and research reactors subject to annual fees. This results in a FY 2005 annual fee of \$54,400 for each licensee.

f. Rare Earth Facilities

The FY 2005 budgeted costs of \$71,000 for rare earth facilities to be recovered through annual fees will be assessed to the one licensee who has a specific license for receipt and processing of source material, resulting in a FY 2005 annual fee of \$71,000.

g. Materials Users

To equitably and fairly allocate the \$26.1 million in FY 2005 budgeted costs to be recovered in annual fees assessed to the approximately 4,500 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline

*Remain
reference*

[FR ; 1999]

On August 10, 2004, the NRC approved an Agreement with the State of Utah under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Agreement transferred to the State the Commission's regulatory responsibility for uranium mills and mill tailings. This Agreement became effective August 16, 2004. Utah previously had become an Agreement State for certain other categories of materials, effective April 1, 1984. This Agreement was amended to include commercial low-level waste disposal responsibilities, effective May 1, 1990.

sites ✓

As a result of this Agreement, four former NRC uranium recovery licensees are now Utah licensees, two of which are uranium mills that are in reclamation. Because NRC does not charge fees to Agreement States or their licensees, the NRC will not collect fees in FY 2005 or thereafter for these four former NRC licensees. (The NRC did not collect annual fees for the mills in decommissioning while under the NRC's regulatory authority, because licensees in decommissioning are exempt from annual fees.) The costs of Agreement State regulatory support and oversight activities for Utah, as for any other Agreement State, would be recovered through the surcharge, consistent with existing fee policy.

decommissioning (?)
no

4. Fee Waivers

The NRC is proposing to modify §171.11(c) to eliminate 'size of the reactor' as a reason for granting annual fee exemptions. In the Statement of Consideration in the 1986 final fee rule (51 FR 33227; September 18, 1986), the Commission decided against determining its fees based on the size of the reactor because it found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Because it was not the Commission's intent to issue a fee schedule that would have the effect of forcing smaller, older

reactors to shut down, it added an annual fee exemption provision which takes reactor size, age, and other relevant factors into consideration.

However, none of these smaller reactors is still licensed to operate. For several years the NRC has issued no waivers on the basis of size. Moreover, the NRC streamlined its fee program in the FY 1995 final fee rule (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on an analysis that showed that the difference in fees resulting from a breakdown of reactors into different fee categories was *minimal* ~~small~~ relative to the ~~size amount~~ of the annual fee per reactor. Therefore, the NRC believes that the current reference to 'size of the reactor' in §171.11(c), as a condition for granting annual fee exemptions, is no longer needed. No other class of licensee contains an exemption provision based on size.

5. Administrative Amendments

The NRC is proposing to eliminate reference to specific facility names under Category 1.A of the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by the NRC' in §171.16. This administrative change would be made to streamline the fee schedule in light of the fact that the listing of individual facilities within a fee category is not necessary to identify license fee amounts. Given this change, a licensee within Category 1.A would determine its annual fee amount by the fee subcategory assigned to its license, as is the practice for other licensees.

Additionally, the NRC is proposing to modify §§171.15(d)(1)(ii) and 171.16(e)(2) to clarify that activities comprising the annual fee surcharge include activities associated with unlicensed sites and unregistered general licensees. Currently, these paragraphs state that complex