



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Comments incorporated

January 11, 2005

MEMORANDUM TO: Tammy Croote
Office of the Chief Financial Officer

FROM: *Michael T. Lesar*
Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: REVIEW OF PROPOSED RULE, "REVISION OF FEE SCHEDULES;
FEE RECOVERY FOR FY 2005" (10 CFR PARTS 170 AND 171; AH61)

The Rules and Directives Branch has reviewed the subject rulemaking with the exceptions noted in the attached mark-up of the package.

A Regulatory History must be created for this rulemaking once it has been published in the Federal Register. The Regulatory History should be created in ADAMS. In the profile of each document related to the Regulatory History, use the Regulation Identifier Number (RIN) as the Case/Reference Number (RIN-AH61). This will make it easier to combine all the documents into a folder under ADAMS once the rulemaking has been published.

If you have any questions concerning this matter, please contact me at 415-7163 (MTL), or Betty Golden, 415-6863 (BKG2).

Attachment: As stated

ADDRESSES: You may submit comments by any one of the following methods. Please include number RIN 3150-AH61 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. Address questions about our website to Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm, Federal workdays. (Telephone 301-415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking website at <http://ruleforum.llnl.gov>.

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 ³ notice, no further action has been taken by the Senate or House on this bill. A successor to *PROPOSED rule* H.R.6, *(and not correct)* 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.

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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 the NWF. The NRC's total budget authority for FY 2005 is \$669.3 million, of which approximately \$68.5 million has been appropriated from the NWF. Based on the 90 percent fee

recovery requirement, the NRC must recover approximately \$540.7 million in FY 2005 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 2005 is \$4.6 million less than the amount estimated for recovery in FY 2004.

The FY 2005 fee recovery amount is reduced by a \$2.2 million carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 fee rule was published. This leaves approximately \$538.5 million to be recovered in FY 2005 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$163.1 million will be recovered in FY 2005 from part 170 fees and other offsetting receipts. For FY 2005, the NRC also estimates a net adjustment of approximately \$0.5 million for FY 2005 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2005 for FY 2004 invoices. The remaining \$374.9 million would be recovered through the part 171 annual fees, compared to \$389.9 million for FY 2004.

The primary reason for the decrease in total fees for FY 2005 is that the NRC's fee recovery is 90 percent in FY 2005, compared to 92 percent in FY 2004, in accordance with the FY 2001 Energy and Water Development Appropriations Act. This decrease in the NRC's required fee recovery is sufficient to offset the increase of 1.5 percent in the NRC's non-NWF budget in FY 2005.

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 (\$286,121 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.

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 in order 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 rather 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-27⁷⁶ 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, and therefore^{it} should not be assumed to be '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^{This system} is now an established source of data on the NRC's employees' 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 is another reason for the proposed increase in the hourly rates.

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 time and labor data that

showed that NRC direct employees spend, on average, 1,446 hours per year on activities directly associated with the programmatic mission of the NRC, as discussed above. 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 assumptions about hours per FTE that may be used for other agency financial purposes, and that it results in hourly rates that more accurately reflect the full cost of providing services under part 170. The NRC believes this change 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.

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 above, 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 occur more so 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 paying less total (part 170 plus and part 171) fees than if this change were not enacted, namely, those licensees for which the NRC performs fewer hours of part 170 services than the average licensee in that class. Similarly, licensees for which the NRC performs more hours of part 170 services than the average licensee in that class would pay more in total fees under the proposed higher hourly rates.

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

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 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 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 above, the proposed higher hourly rate of \$198 for the materials program is a key reason for the increases in the proposed licensing fees. ✓

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

\$1,700, 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 \$1,090 to the current fee is based on experience with the registrations to date, which indicates that the average cost per registrant is 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} Such orders resulted in the NRC's review of licensee-specific amendments and other activities that normally would have been billable under part 170, except for the fact 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 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. Recovering the site-specific decommissioning costs associated with these unlicensed sites, though part 170 fees, is consistent 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 to Category 14A.) 10-GFR-part 170.02 would also be revised to expand the scope

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of part 170 to cover an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

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 to, and granted from, 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. ✓
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 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 this final rule.

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7. Administrative Amendments

The NRC is proposing to modify number or letter identifiers associated with the fee categories listed in §170.31, as well as make other minor administrative changes, ^{so} such 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 §§170.21 and 171.16(d), in some instances they are slightly different. This change would enhance the NRC's ability to track part [§]170 and part ₆ 171 fees for license categories and simplify communication to licensees about applicable fee categories.

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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 §§170.02 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;

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

7. Make minor administrative changes to in §170.31 to enhance consistency in the identification of fee categories between part⁵ 170 and part⁶ 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 follows.

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 32225; 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 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, all but two categories (sub-classes) of licenses would have increased annual fees while two would have decreased 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

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.

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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:	
a. International activities	\$10.0
b. Agreement State oversight	\$8.1
c. Complex materials site decommissioning activities (formerly site decommissioning management plan activities not recovered under part 170)	\$2.8
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based	

on existing law or Commission policy:

- a. Fee exemption for nonprofit educational institutions \$8.8
- b. Licensing and inspection activities associated with other Federal agencies \$1.4
- c. Costs not recovered from small entities under 10 CFR 171.16(c) \$6.1

3. Activities supporting NRC operating licensees

and others:

- a. Regulatory support to Agreement States¹ \$13.9
- b. Generic decommissioning/reclamation (except those related to power reactors) \$10.0

Total surcharge costs \$61.0

Less percent of NRC's FY 2005 total budget (less NWF) -60.1

Total Surcharge Costs to be Recovered \$0.9



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As shown in Table IV, \$0.9 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

¹This estimate includes the costs of homeland security activities associated with sources in Agreement States, even though regulatory authority remains with the NRC for these activities. However, fees are not assessed to sources in Agreement States for these activities, therefore these costs are included in this surcharge category.

numbers in the table may result in a total that is slightly different than the one shown.

Separately, the NRC would continue to allocate the 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.)

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TABLE V. - ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	<u>Percent</u>	<u>\$M</u>	<u>Percent</u>	<u>\$M</u>	<u>\$M</u>
Operating Power Reactors	74	2.1	82.3	0.8	2.8
Spent Fuel Storage/ Reactor Decomm.	---	---	4.7	0	0
Nonpower Reactors	---	---	0.1	0	0
Fuel Facilities	8	0.2	7.2	0.1	0.3
Materials Users	18	0.5	4.1	0	0.5
Transportation	---	---	1.0	0	0
Rare Earth Facilities	---	---	0.2	0	0
Uranium Recovery	<u>---</u>	<u>---</u>	<u>0.4</u>	<u>0</u>	<u>0</u>
Total Surcharge	100	2.8	100.0	0.9	3.7 3.6

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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

TABLE VI. - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility type</u>	Number of <u>facilities</u>	<u>Effort factors</u> (in percent)→	
		<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)

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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

<u>Facility type</u>	<u>FY 2005 annual fee</u>
High Enriched Uranium Fuel	\$6,230,000
Uranium Enrichment	\$3,465,000
Low Enriched Uranium	\$1,866,000
UF ₆ Conversion	\$800,000
Limited Operations Facility	\$733,000
Others	\$533,000

50 percent of uranium recovery surcharge 1,864

Total Annual Fee Amount for DOE 538,513

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50 percent of generic/other uranium recovery budgeted costs 136,079

50 percent of uranium recovery surcharge 1,864

Total Annual Fee Amount for Title II Specific Licenses 137,943

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The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to equally weight the effort levels for each category of uranium recovery facilities, in accordance with the NRC's FY 2005 budgeted activities. It has also been revised to reflect two fewer uranium recovery facilities, in light of the fact that regulatory authority for these two facilities has been transferred to Utah (see discussion under 'Agreement State Activities' below). However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach 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;

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).

c. Power Reactors

The approximately \$301.4 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 \$2,898,000 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 \$3,063,000 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 (Non-power 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 \$54,300 for each licensee.

f. Rare Earth Facilities

The FY 2005 budgeted costs of \$70,300 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 \$70,300 for this licensee. 

g. Materials Users

To equitably and fairly allocate the \$26.7 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 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. Changes in FY 2005 annual fees for categories of licensees within the materials class reflect not only changes in budgeted resources for the materials class of licensees, but also changes in estimates of average professional staff time for materials users license applications and inspections, derived from the biennial review performed for the FY 2005 fee rule, as discussed above. (Large percentage increases in certain materials 

users fee categories, e.g., 3H, 3I, 9A, 9B, are the result of significant changes to these average professional staff time estimates.) 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 \$21.6 million in general costs and is 1.31 for FY 2005. The inspection multiplier is the multiple necessary to recover approximately \$4.5 million in inspection costs for FY 2005, and is 1.08 for FY 2005. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2005, approximately \$36,000 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the \$38,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately \$504,000 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 \$4.2 million in FY 2005 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately \$1.1 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining \$3.2 million, approximately 16 percent is allocated to the 84 quality assurance plans authorizing use only and the 35 quality assurance plans authorizing use and design/fabrication. The remaining 84 percent is allocated only to the 35 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of \$4,300 for each of the holders of quality assurance plans that authorize use only, and an annual fee of \$80,200 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2005. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories (those categories that include a number of small entities) since the small entity fees were first established, and changes that had occurred in the fee structure for materials licensees over time. While proposed fees for many of these selected categories of materials licensees would increase in FY 2005 compared to FY 2004, these fees are still lower, on average, than those charged in FY 2000, when small entity fees were last revised.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees from FY 2000 to FY 2005, on average, for those categories of materials licensees that contain a number of small entities, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Handwritten initials/signature

Therefore, the NRC is proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2005. The NRC plans to re-examine the small entity fees again in FY 2007.

3. Agreement State Activities

On ~~July~~ 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 authority for uranium mills and 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.

responsibility (OSTP)
mill

amended to include LLM
disposal
responsibility
as follows

? 2004

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

5/11/90

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 even while under the NRC's regulatory authority, ^{because} since 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.

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} Since it was not the Commission's intent to ^{issue} promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, ~~it added~~ ^{was 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 the fact that the difference in fees resulting from this more detailed analysis was small relative to the size 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 sub-category assigned to its license, as is the practice for other licensees.

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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 complex materials site decommissioning activities. Currently, these rule-sections ^{paragraphs} state that complex materials site decommissioning activities not covered under part 170 are included in the surcharge. Because this surcharge category also includes part 171, or generic ^{costs} associated with these decommissioning sites, the NRC is proposing to eliminate the phrase, 'not covered under part 170.' Note that if the regulatory revision to charge unlicensed sites in decommissioning, as ^{previously} discussed above, is implemented, this surcharge category would include only part 171 activities associated with these unlicensed sites in decommissioning.

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Finally, the NRC is proposing to include, for each fee sub-category listed in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at §171.16(d),

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a unique number or letter identifier and to make other minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171. This change would enhance the NRC's ability to track part 170 and part 171 fees for license categories and simplify communication to licensees about applicable fee categories.

In summary, the NRC is proposing to --

1. Establish rebaselined annual fees for FY 2005;
2. Retain the current reduced fees for small entities;
3. Adjust the annual fees to reflect the changes in agreement state activities;
4. Modify §171.11 to eliminate 'size of reactor' as a reason for granting annual fee exemptions; *and*
5. Eliminate reference to specific facility names under Category 1.A of §171.16, revise §171.15 and §171.16 to clarify that activities comprising the annual fee surcharge include complex materials site decommissioning activities, and make other minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171.

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III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. This

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed ^{under} pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in National Cable Television Association, Inc. v. United States, 415 U.S. 36 (1974) and Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: National Cable Television Association v. Federal Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976); and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory

percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2005 is 90 percent. To comply with this statutory requirement and in accordance with §171.13, the NRC is publishing the amount of the FY 2005 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that --

(1) The annual fees be based on approximately 90 percent of the Commission's FY 2005 budget of \$ 669.3 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.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in Florida Power and Light Company v. United States, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was

upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 90 percent of its FY 2005 budget authority through the assessment of user fees. This ^{act} further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees. 

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2005. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2005.

IX. Backfit Analysis

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

List of Subjects

10 CFR Part 170 -- Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171 -- Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

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

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

Authority: Sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. In §170.2, paragraph (t) is added to read as follows:

§170.2 Scope. (check formatting)

Except for persons who apply for or hold the permits, licenses, or approvals exempted in §170.11, the regulations in this part apply to a person who is:

(t) [↑]an owner or operator of an unlicensed site in decommissioning being conducted under NRC oversight.

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

§170.11 Exemptions.

(a) ***

(1) ***

(iii) ***

(A) ***

(1) set out paragraph removing the word "and". †

(2) set out paragraph - adding " and " at the end of the paragraph.

(3) The fee exemption is requested in writing by the person submitting the report/request to the Chief Financial Officer in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

← i
T

* * * * *

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): ← \$205 per hour
- (b) Nuclear Materials and Nuclear Waste Program
(§170.31 Activities): ← \$198 per hour

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5. In §170.21, Category K in the table and footnote 1 are revised to read as follows:

§170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees

Fees^{1,2}

K. Import and export licenses:

Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.

1. Application for import or export of production and utilization facilities⁴ (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).

Double
dash

Application[^]-new license, or amendment \$12,900. +

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, or amendment \$7,500. +

3. Application for export of components requiring only the assistance of the Executive Branch to obtain foreign government assurances.

Application[^]-new license, or amendment \$2,400. J

4. Application for export of facility components and equipment (examples provided in 10 CFR 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.

Application[^]-new license, or amendment \$1,600. J

5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.

Amendment \$300.

¹ Fees will not be charged for orders related to civil penalties issued by the Commission under §2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be

charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

² Full cost fees will be determined based on the professional staff⁷ time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff⁷ hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed

7 ✓

7 ✓

or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

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⁴ Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

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6. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees¹

Fee^{2, 3}

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 \$2,100.

8. Civil defense:

A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

Application \$460.

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 \$19,400.

^
-

B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:

Application - each device \$19,400.

^
-

C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:

Application 1 each source \$2,200.

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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 1 each source \$750.

+

10. Transportation of radioactive material:

A. Evaluation of casks, packages, and shipping containers:

1. Spent Fuel, High-Level Waste, and plutonium air packages

Licensing and inspection Full Cost.

2. Other Casks

Licensing and inspection Full Cost.

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

1. Users and Fabricators

- 14. A. 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.

- B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed 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, and the export only of heavy water, or nuclear grade graphite.

- A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). This category includes application for export and import of radioactive waste.

Application ¹ new license, or amendment \$12,900. ✓

- B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes application for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste

Compact Commission, the U.S. Environmental Protection Agency,
etc.

Application - new license, or amendment \$7,500.

- C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances.

Application - new license, or amendment \$2,400.

- D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. 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 located in the same country, 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, or amendment \$1,600.

- E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.

102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

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§171.11 [Amended]

Section 171.11 is amended by removing

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

(2),

(and paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as (c)(2), (c)(3), and (c)(4), respectively.)

✓

§171.15 Exemptions.

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

- (1) Age of the reactor;
- (2) Number of customers in rate base;
- (3) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
- (4) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

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

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

(b)(1) The FY 2005 annual fee for each operating power reactor which must be collected by September 30, 2005, is \$3,063,000.

decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately \$400. 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 onsite, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2005 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor	\$54,300.
Test reactor	\$54,300.

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

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

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	<u>Maximum annual fee per licensed category</u>
<u>Small Businesses Not Engaged</u>	

and use of source material for shielding
authorized under part 40 of this
chapter when included on the same
license 6,200.

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) 4,500.

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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 8,000.

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

- D. Licenses for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes licenses 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 located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. N/A⁸

- E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. N/A⁸

- 16. Reciprocity N/A⁸

- 17. Master materials licenses of broad scope issued to Government agencies 257,000⁹ 

- 18. Department of Energy:
 - A. Certificates of Compliance 1,086,000¹⁰ 
 - B. Uranium Mill Tailing Radiation

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¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2004, and permanently ceased licensed activities entirely by September 30, 2004. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of §171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

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² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with §171.13 and will be published in the Federal Register for notice and comment.

⁴ A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

⁵ There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

annual fees from FY 2000 to FY 2005, on average, for those categories of materials licensees that contain a number of small entities, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them. X

Therefore, the NRC proposed to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2005. The NRC plans to re-examine the small entity fees again in FY 2007.

IV. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2005.

Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

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

(1) *Small business*--a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*--a manufacturing concern with an average of 500 or fewer employees during each pay period for the preceding 12 calendar months;

¶ (3) *Small organizations*[✓]--a not-for-profit organization that is independently owned and operated and has annual gross receipts of \$5 million or less;

(4) *Small governmental jurisdiction*[✓]--a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*[✓]--an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.^{2/1}

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¹ An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

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To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR Part 121).

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

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

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

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

NRC Small Entity Fees

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

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Maximum annual fee
per licensed
category

Small business not engaged

in manufacturing and small
not-for-profit organizations
(Gross Annual Receipts)

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\$350,000 to \$5 million \$2,300.
Less than \$350,000 500.

Manufacturing entities that
have an average of 500
employees or less

35 to 500 employees 2,300.
Less than 35 employees 500.

Small Governmental Jurisdictions
(Including publicly supported
educational institutions)
(population)

20,000 to 50,000 2,300.
Less than 20,000 500.

Educational institutions that
are not State or publicly
supported, and have 500 Employees
or less

35 to 500 employees	2,300.
Less than 35 employees	500.

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's website at <http://www.nrc.gov>. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

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Instructions for Completing NRC Small Entity Form 526

- (1) File a separate NRC Form 526 for each annual fee invoice received.
- (2) Complete all items on NRC Form 526, as follows:
 - a. Enter the license number and invoice number exactly as they appear on the annual fee invoice.
 - b. Enter the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) if known.
 - c. Enter the licensee's name and address as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does

not constitute a request to amend the license. Any request to amend a license must be submitted to the respective licensing staff in the NRC's regional or headquarters offices.

- d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:
- (i) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
 - (ii) The size standards apply to the licensee, including all parent companies and affiliates--not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material. 4
 - (iii) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources--not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority (if included in gross or total income), proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider. T
 - (iv) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which