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Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2005; Final Rule

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: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2005, less the amounts appropriated from the Nuclear Waste Fund (NWF). The total amount to be recovered for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million.

DATES: Effective July 25, 2005.

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

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

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Tammy Croote, telephone 301-415-6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 90 percent of its FY 2005 budget authority, less the amounts appropriated from the NWF, through fees. In the Consolidated Appropriations Act of 2005 (Pub. L. 108-447), as adjusted by the rescission discussed in Section 122(a), Congress appropriated $669.3 million to the NRC for FY 2005. This sum includes $68.5 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million.

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

II. Response to Comments

The NRC published the FY 2005 proposed fee rule on February 22, 2005 (70 FR 8677) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received 13 comments dated on or before the close of the comment period (March 24, 2005) and 3 additional comments thereafter, for a total of 16 comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Legal Issues

Information Provided by NRC in Support of Proposed Rule

Comment. Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. These commenters stated that the NRC should inform stakeholders of the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment on the proposed fee rule. The commenters stated that the NRC should provide an itemized accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs.

These commenters further stated that industry's ability to evaluate the NRC's application of resources and priorities is impeded because the NRC allocated 72 percent of its recoverable budget to the generic assessment under part 171, while only 28 percent is recovered under the discrete fee provisions of part 170.

Response. Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 90 percent of the NRC's FY 2005 budget authority, less the amounts appropriated from the NWF, from applicants and the various classes of NRC licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs

for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted full time equivalent (FTE) and contract costs at the planned activity level for all agency activities. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned activity within each program to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

To assist commenters, the NRC also made available in the Public Document Room NUREG–1100, Volume 20, "Performance Budget: Fiscal year 2005" (February 2004), which discusses the NRC's budget for FY 2005, including the activities to be performed in each program. This document is also available on the NRC public Web site at *http://www.nrc.gov/reading-rm.html.* The extensive information available provided the public with sufficient information on how NRC calculated the proposed fees. Additionally, the contact listed in the proposed fee rule was available during the public comment period to answer any questions that commenters had on the development of the proposed fees.

Regarding the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, because fee allocation is controlled by statute. (The NRC also notes its estimated fee recovery in FY 2005 from parts 171 and 170 fees is 71 percent and 29 percent, respectively.) The NRC assesses part 170 fees under the IOAA, consistent with implementing Office of Management and Budget (OMB) Circular A–25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients cannot be recovered under part 170. Further, the NRC notes that, as required by OBRA–90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. The NRC's work papers clearly set forth the components of these generic costs and how those costs are recovered through annual fees. Additionally, the NRC notes that it has taken action to maximize the amount recovered under part 170, consistent with existing law and agency policy. For example, in FY 1998 the NRC began charging part 170 fees for all resident inspectors' time (63 FR 31840; June 10, 1998) and in FY 1999 the NRC started charging part 170 fees for all project manager activities associated with oversight of the assigned license or plant (64 FR 31448; June 10, 1999). In FY 2003, the NRC amended its regulations to allow the NRC to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and use of mixed oxide fuel. Additionally, in this year's fee rule, the NRC is revising its hourly rate calculation formula to better reflect actual agency costs, resulting in higher hourly rates. Once implemented, the NRC estimates that the increased hourly rates will increase fee recovery under part 170 from approximately 29 percent in FY 2005 to more than 37 percent in FY 2006. The NRC strives, as a matter of policy, to maximize its fee collections under part 170.

B. Specific Part 170 Issues

1. Hourly Fees

Comment. Several commenters expressed concerns about the large increases in the NRC's hourly rates associated with the proposed changes to 10 CFR 170.20. One commenter was concerned that these changes disproportionately shift NRC management and overhead costs to single unit licensees with an NRC project manager and two resident inspectors, as compared to multiple unit sites that may share project manager and resident inspector resources. This commenter stated that these overhead costs should more appropriately be included in 10 CFR Part 171 fees.

Response. The NRC acknowledges that the increases to the part 170 hourly rates are more significant this year than in previous years, and agrees that these increases will have a greater impact on the sites that receive more part 170 services (*e.g.*, sites with more than one resident inspector). The NRC's hourly rates are based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. The primary reason for the increases in the hourly rates in FY 2005 is the NRC's use of a revised estimate of the number of direct hours per FTE in calculating these rates. The NRC's new hourly rates are justified because they more accurately reflect the full cost of providing services under part 170. The OMB's Circular A–25, "User Charges," emphasizes that agency fees should reflect the full cost of providing services to identifiable beneficiaries. The higher hourly rates are consistent with this guidance. The increases also support industry comments that consistently recommend the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees. Therefore, the NRC is retaining the revised hourly rate formula as presented in the FY 2005 proposed fee rule. This results in hourly rates of $205 for the Nuclear Reactor Safety (reactor) program, and $197 for the Nuclear Materials and Waste Safety (materials) program. Although the higher hourly rates will have a greater impact on licensees that receive more part 170 services, the NRC believes this is appropriate because the new rates more accurately reflect the costs of providing these services.

2. Increase in the Category 9A Evaluation Fee

Comment. One commenter objected to the increase in the fees for materials category 9A (device safety evaluations) in 10 CFR 170.31, stating the increases are well beyond the inflation rate and capricious.

Response. The NRC recognizes that there was a large increase in the evaluation fee for materials category 9A. The change is a result of both the increase in the materials program hourly rate as well as a revised estimate of the average professional staff time required to process this type of application. As previously noted, the increase in the hourly rate is due to the revision of the NRC's hourly rate calculation formula to better reflect actual agency costs. The change in the average professional staff time estimate is based on the biennial review of fees performed for the FY 2005 fee rule, in compliance with the Chief Financial Officers (CFOs) Act of 1990 (Pub. L. 101–578, November 15, 1990, 104 Stat. 2838). During the biennial review, the NRC evaluates the historical professional staff hours used to process an application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This evaluation indicated that

processing time for most fee categories decreased or remained the same; however, processing time for some fee categories, including 9A, increased because of the increased staff effort associated with processing these requests. The increased staff effort for these categories is due to the complexity of the submissions and the additional review required to assure the continued quality and adequacy of technical and regulatory determinations. The biennial review completed for the FY 2005 fee rule also reflected more substantial data (*i.e.*, larger data sets) available for this assessment than in previous years. (The data on 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]). The revised fees better reflect actual agency costs, and therefore the NRC believes the fee increases are justified.

3. Fees for Unlicensed Sites in Decommissioning

Comment. One commenter expressed its opposition to the imposition of part 170 fees on unlicensed companies currently in site decommissioning, stating that these companies are not receiving a benefit from the NRC. The commenter disagreed with the NRC's policy of imposing fees on these companies because the costs are associated with revised government decommissioning standards and fees would discourage voluntary decommissioning. The commenter stated that if the NRC decides to impose these fees, the fees should not be applied to sites currently in decommissioning.

Response. As a matter of policy, the NRC assesses part 170 fees under the IOAA, which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Committee Report accompanying OBRA–90 specifically states that the Conference Committee "* * * expects the NRC to continue to assess fees under the IOAA to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives" (136 Cong. Rec. H12692–3, daily ed. October 26, 1990). The NRC has received additional direction on this issue in the OMB Circular A–25, "User Charges," in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction in charging part 170 fees to recover the costs of providing special benefits to identifiable recipients. The NRC believes recovering the site-specific decommissioning costs associated with both licensed and unlicensed sites through part 170 fees is consistent with the full cost recovery provisions of IOAA and Circular A–25.

While the NRC acknowledges that decommissioning standards have been revised over the years, regulatory standards sometimes change for operating licensees, as well, in light of new safety or security issues or information. The NRC does not believe this is sufficient rationale for not imposing fees in these circumstances. Additionally, while the NRC is not providing the benefit of an operating license to sites in decommissioning—whether licensed or unlicensed—the NRC is incurring costs to provide services to these sites, and believes this justifies the imposition of fees to recover these costs. As such, the NRC does not believe it is appropriate to enact this policy but not apply it to existing sites in decommissioning, as the commenter requested.

However, NRC appreciates the concerns raised by this commenter. To address these concerns, NRC will delay the effective date of this requirement to one year after the effective date of the FY 2005 final fee rule. The NRC believes this later effective date will allow unlicensed sites to better plan for the imposition of these fees. This delayed effective date will also allow the owners/operators of unlicensed sites time to make as much progress as practicable in completing these decommissioning activities before the imposition of fees by the NRC. The NRC believes charging part 170 fees to unlicensed sites, but with sufficient notice before implementation, will appropriately implement the NRC's goal of enhancing the fairness and equity of its fee schedule while encouraging continued progress on meeting decommissioning standards.

4. Fees for Licensee-Specific Activities Resulting From Security Related Orders

Comment. One commenter suggested not amending part 170 to allow fees to be assessed for any licensee-specific activity resulting from orders issued by the Commission not related to civil penalties or other civil sanctions. This commenter stated that licensees are required to implement additional security requirements at their own cost, and that adding additional homeland security costs to the fee base could discourage licensees from voluntary implementation of technological advances or additional security measures beyond the scope of the orders.

Response. The NRC acknowledges the impact of these fees on the licensees. However, the NRC must comply with OBRA–90 and recover most of its budget, including homeland security costs, through fees to licensees. As such, the NRC must recover the costs of licensee-specific actions resulting from security-related orders through either parts 170 or 171 fees. The NRC believes it is more fair and appropriate to recover these costs through part 170 fees because the activities are licensee-specific and serve an identifiable beneficiary. By recovering the costs of licensee-specific activities resulting from orders through part 170 fees, as opposed to part 171 annual fees, the NRC will more fairly allocate the cost recovery of these activities amongst licensees. This is because part 170 fees will be charged to a licensee based on the actual time NRC spends ensuring compliance for that licensee, rather than spreading total industry costs evenly to all licensees. This will allow the NRC to recover more fees from licensees that use more NRC resources in complying with these orders.

The NRC also believes this change is important because the NRC's use of orders to impose additional requirements for safety or security reasons has recently increased. For example, subsequent to the September 11, 2001, terrorist attacks, the Commission has imposed security requirements on various classes 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 or other civil sanctions, the NRC is revising its regulations to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not changing cost recovery for the development of these orders or for hearings requested on these orders; these costs will continue to be recovered under part 171 (unless the hearing falls within the purview of 10 CFR 170.11(a)(2) addressing fees for Presidentially-directed national security programs).

C. Specific Part 171 Issues

1. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received three comments objecting to the large increase in the annual fees for uranium recovery licensees. These commenters stated that there continues to be a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from these services. Additionally, the commenters stated that the NRC needs to address the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs.

The comments supported the continuation of the 2002 determination that the DOE must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. In addition, one commenter cited the dramatic recovery of the price of uranium and indicated that this may generate future requests for licensing actions. The commenter was concerned that the NRC may not possess sufficient experienced staff to process these requests. This commenter also noted a previous Commission comment which indicated the existence of a uranium recovery facility was in the public interest.

Response. The NRC acknowledges that uranium recovery annual fees increased by a large percentage (90 percent to 115 percent) from FY 2004 to FY 2005. However, the FY 2005 uranium recovery annual fee of $30,200 is still significantly lower than previous years. (For example, these fees ranged from approximately $82,000 to $132,000 in FY 2001, and $39,000 to $64,000 in FY 2003.) Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. Additionally, because annual fees must recover all fee class resources not recovered through part 170 fees, annual fees are impacted by the part 170 fees collected from that fee class.

In response to concerns regarding decreasing numbers of NRC licensees in light of more states becoming Agreement States, the NRC notes that budgeted resources providing support to Agreement States or their licensees are included in total surcharge costs, which are offset by funding provided by Congress. For example, if the NRC develops a rule or guidance document, or even potentially a database or other tracking system, that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the surcharge according to the percentage of licensees in that fee class in Agreement States (*e.g.*, if 50 percent of uranium recovery licensees are in Agreement States, 50 percent of these regulatory infrastructure costs would be included in the surcharge). Total surcharge costs are reduced by the fee relief (*i.e.*, direct appropriations from the General Treasury) provided by Congress. To address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, as noted previously, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. However, to the extent that this fee relief is insufficient to cover all surcharge costs, these remaining surcharge costs are spread to all licensees based on their percentage of the budget.

In FY 2005, $2.3 million of the $62.4 million in total surcharge costs was not covered by the 10 percent fee relief, and therefore is included in licensees' annual fees. Eighty-two percent (the percentage of the budget associated with reactors) of the $2.3 million in net surcharge costs is included in reactor annual fees, and the remainder is spread to all other licensees' annual fees. Accordingly, NRC's uranium recovery licensees are not generally burdened with the costs of regulating Agreement State licensees or any other costs not associated with uranium recovery licensees (only to the extent that a small portion of these costs are spread to all licensees through the net surcharge). In FY 2005, total surcharge costs allocated to the entire uranium recovery class are $8,600.

However, the NRC acknowledges that license fee classes with fewer licensees are more impacted by changes to the budget and changes to part 170 collections. The uranium recovery fee class was reduced by four licensees (two of which paid annual fees) in FY 2005 because regulatory responsibility for these licensees was transferred to the State of Utah in accordance with an Agreement under section 274 of the Atomic Energy Act (AEA) of 1954, as amended, effective August 16, 2004. This resulted in fewer NRC uranium recovery licensees (now six in total, including a license for the DOE) paying for the FY 2005 generic and other regulatory costs associated with the regulation of the NRC's uranium recovery licensees. Accordingly, annual fees increased for the NRC's uranium recovery licensees in FY 2005 because the fee class now has fewer licensees; however, the higher annual fees are not the result of NRC licensees paying for activities that support Agreement State licensees, as previously discussed. Because annual fees must recover budgeted resources for a fee class not recovered through part 170 fees, to the extent that part 170 fees do not completely recover the costs of budgeted resources for part 170 activities, these costs are included in annual fees. The NRC does note that the increases to hourly rates enacted through this rulemaking will enable the agency to recover more of the budgeted resources for licensee-specific activities, and once implemented, will reduce costs that must be recovered through annual fees.

With respect to the general comment that there is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from these services, the NRC notes that the uranium recovery fees reflect the budgeted resources associated with the regulation of NRC's uranium recovery licensees. As previously described, the fee relief of 10 percent for FY 2005 covers almost all (with the exception of $2.3 million) of the budgeted resources associated with activities that do not directly benefit NRC licensees, and the total surcharge cost allocated to the entire uranium recovery class is $8,600 in FY 2005. The NRC must by statute assess annual fees to uranium recovery licensees to recover their budgeted costs not recovered through part 170 fees and other receipts. While the NRC acknowledges the previous Commission comment about the existence of a uranium recovery facility being in the public interest, this does not negate the NRC's legal obligation to collect fees to recover the costs of regulating uranium recovery facilities.

In response to the comment that the NRC may not possess sufficient experienced staff to process future licensing actions for uranium recovery licensees, the issue raised is outside the scope of this rulemaking. However, the NRC does consider market forces and expected future licensing activities in formulating its budget, and has a human resources program in place to address future agency skill needs.

Finally, the NRC notes that this final rule continues the policy of assessing the DOE one-half of all NRC budgeted costs attributed to generic/other

activities for the uranium recovery program.

2. Annual Fees for Fuel Facilities Licensees

Comment. One commenter expressed concern over the increase in annual fees for fuel facilities licensees. The comments discussed the unpredictability of estimating proposed fee increases, as well as that the NRC did not mention in the FY 2004 fee rule a one-time adjustment it had made to account for part 170 fees received for prior year activities (which decreased annual fees in FY 2004 for fuel facilities).

Response. The NRC appreciates the concerns raised about fee predictability and stability, and does strive to notify licensees as early as possible of proposed fee changes. While the one-time adjustment for the fuel facilities was discussed in the FY 2004 final fee rule (69 FR 22671; April 26, 2004), the NRC acknowledges that the rule did not fully explain the potential impacts of this adjustment. The NRC aims to more fully explain any such changes in the future.

Although the NRC understands that large fluctuations in fees are undesirable, the NRC must recover most of its budget to comply with OBRA–90, as amended. To do so, the NRC annually promulgates a rule establishing licensee fees. Because of concerns about annual fluctuations in these fees, the NRC announced in FY 1995 that annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated by rebaselining. Commission policy sets the maximum interval between rebaselined fee schedules at three years. Based on the change in the magnitude of the budget to be recovered through fees, the Commission determined that it was appropriate to rebaseline its part 171 annual fees in FY 2005. Rebaselining fees resulted in increased annual fees for fuel facilities compared to FY 2004 due in part to an increase in budgeted resources for FTE for fuel facilities licensing and inspection activities. (These resources may not be entirely recovered under part 170 because of factors such as the existing hourly rates, which do not account for the time direct FTE spend on training and other administrative activities, and because licensing resources spent on contested hearings are not generally recovered under part 170, in accordance with 170.11(a)(2).) A decrease in part 170 fees from this class also contributed to the annual fee increase. As discussed in the FY 2004 proposed fee rule, this decrease in part 170 revenue results partly from the one-time $2.1 million adjustment (increase) to part 170 revenue in FY 2004 to account for fuel facilities fees that were improperly coded (*i.e.*, costs associated with the Duke Cogema Stone and Webster application) and not factored into the fee calculations for FY 2001, FY 2002, and F 2003.

3. Increase in the Annual Fees for Some Materials Licensees

Comment. Two commenters strongly objected to the increase in the annual fees for some of the categories of the materials licenses. One commenter stated that the increase will have to be passed on to their customers which will place the licensee at a cost disadvantage in a very competitive environment.

Response. The NRC has addressed comments regarding the impact of fees on industry in previous fee rulemakings. The NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA–90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of licensee reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned activity in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

Annual fees for materials users increased for certain fee categories for two reasons. First, materials users' annual fees include more budgeted resources for activities such as licensing and inspection (including some homeland security activities) in FY 2005 than in FY 2004. Second, the distribution of the materials users class resources to fee categories within this class was revised based on the biennial review of fees. As mentioned previously, the staff biennially reviews the average professional staff hours associated with processing applications and performing inspections. This review was performed in FY 2005, and indicated that processing time for most fee categories decreased or remained the same; however, processing time for some categories (*e.g.*, categories 3H, 3I, 9A, and 9B) increased since the last biennial review of fees, based in large part on the increased complexity of the submissions for these fee categories and the additional review required to assure the continued quality and adequacy of technical and regulatory determinations. Because the total budgeted resources for the materials users class are distributed to fee categories within that class based on these average review times, this resulted in more significantly increased annual fees for these categories of licensees.

D. Other Issues

1. Recovery of Security Costs

Comment. Several commenters strongly objected to the NRC collecting security-related costs from licensees. These commenters stated that homeland security issues related to nuclear power plants are part of the U.S. government's overall responsibility to protect its critical infrastructure, and hence these costs should be excluded from the fee structure and funded through the General Treasury. These commenters noted that the nuclear industry has already incurred significant security costs, and that these costs have not been reimbursed by the Federal government, unlike what has occurred for other industries. While the commenters stated that they recognized the public benefit of enhancing the already strong security at nuclear facilities, they thought it fundamentally unfair to require licensees to pay for the NRC's additional security-related oversight.

Because of concerns raised regarding homeland security activities and their cost recovery, these commenters urged the NRC to continue to engage the Department of Homeland Security and Congressional leaders to achieve a more equitable outcome for NRC licensees.

Response. The NRC appreciates the concerns raised by commenters regarding homeland security costs being funded through license fees. However, the NRC's required fee recovery is set by

statute and, therefore, is outside the scope of this rulemaking. To implement OBRA–90, as amended, the NRC must recover approximately 90 percent of its budget authority in FY 2005, less the amounts appropriated from the NWF. The total amount to be recovered for FY 2005 is approximately $540.7 million. After accounting for carryover and billing adjustments, the net amount to be recovered through fees is approximately $538 million. This required fee recovery includes homeland security budgeted resources.

Legislation has passed the House of Representatives which would remove some of the NRC's homeland security costs from the fee base. If Congress enacts such legislation, this would be reflected in future fee schedules.

2. NRC Budget

Comment. Some commenters stated that NRC fees should reflect NRC efficiencies and provided suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently, without impeding operational safety. Some commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process, as well as revised inspection, assessment and enforcement processes, should result in reduced fees. Some comments included suggestions to reallocate resources dedicated to the inspection of areas of plants that have little or no safety significance, to efforts to risk-inform regulations, review license renewal applications, and license new reactor designs.

Response. The NRC appreciates the importance of identifying and implementing process efficiencies on an ongoing basis. Every year, NRC offices conduct process reviews and rely on risk-informed practices to develop cost-efficient budgets that will allow them to achieve the NRC's Strategic Plan mission objectives. Nonetheless, the NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters? suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressional budget process affords stakeholders and the public opportunities to provide views, including meetings, testimony, press briefings, etc. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA–90, the fees are established to recover the required percentage of the approved budget. However, the NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

3. Fees Communication and Timing, Including Fee Increase Phase-Ins or Caps

Comment. Several commenters raised concerns that the timing of issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. To address this issue, commenters suggested that the NRC publish an estimate of fees for the following year, coincident with issuance of the proposed fee rule each year. The commenters recognized that while it would likely be impossible for the NRC to offer exact projections, the Commission should be able to develop reasonable estimates of the next year's fees. One commenter suggested phasing in fee increases over a longer period of time, and others similarly suggested the idea of a cap to fee increases. Another commenter requested that the proposed hourly rate increase be rescheduled until the offsetting annual fee reduction coincides with the increase.

Response. The NRC acknowledges the concerns raised by these commenters. As a matter of law (OBRA–90, as amended), the NRC must collect the statutorily mandated level of fees by the end of the fiscal year to which they are attributed, in this case September 30, 2005. However, because the NRC does not know in advance what its future budgets will be (*i.e.*, proposed budgets must be submitted to the OMB for its review before the President submits the budget to Congress for enactment), the NRC believes it is not practicable to project fees based on future estimated budgets. Even if the NRC were able to reasonably predict a future year total budget, the annual fee amounts are also highly sensitive to the allocation of these total resources to license fee classes, the numbers of licensees in a fee class, and the proportion of total class costs recovered from part 170. (Part 170 revenue from a fee class is particularly difficult to predict in advance, and more so for fee classes with small numbers of licensees, whose annual fees are even more sensitive to part 170 revenue estimates.) Estimating these factors even further in advance than the NRC currently does would likely lead to inaccurate future fee projections, which would be misleading to licensees.

With respect to the comment that requested that the proposed hourly rate increase be rescheduled until the offsetting annual fee reduction coincides with the increase, this is what will actually occur. While the higher hourly rates are being established in the FY 2005 final fee rule, licensees will not have to pay the bills reflecting these higher rates until FY 2006 (which begins October 1, 2005). The new hourly rates will not take effect until late in FY 2005, and licensees will not receive bills reflecting the new hourly rates until October 2005. The NRC will receive revenue from the higher hourly rates beginning approximately November 2005. The revenue from the higher hourly rates that the NRC receives in FY 2006 will be used to offset the required annual fee amount for licensees in FY 2006. Therefore, both the higher hourly rates and the annual fees reflecting the offset from the higher hourly rates will be paid by NRC applicants and licensees in the same fiscal year (FY 2006). During FY 2005, licensees paid part 170 fees reflecting the lower hourly rates, and hence the FY 2005 annual fees are offset by the lower hourly rates.

The NRC has considered requests to cap fee increases or phase them in over a longer period of time. In the FY 1999 proposed fee rule, the NRC solicited comments on the idea of a cap to fee increases (64 FR 15876; April 1, 1999). While some comments supported this proposal, others did not because they believed it would lead to some licensees subsidizing the costs of other licensees. The NRC did not adopt a fee increase cap in the FY 1999 final fee rule in light of fairness and equity concerns with this approach and a lack of overwhelming support from commenters (64 FR 31448; June 10, 1999). Upon subsequent evaluation, the NRC continues to believe that the legal and fairness concerns with these fee cap strategies or other phase-in approaches outweigh the benefits of enhanced fee stability. Given the requirements of OBRA–90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. The NRC's fees are based on the current year budgeted costs of activities benefitting the associated license fee classes, and hence reflect the best assessment of who should be paying for these costs. However, the NRC will continue to strive to issue its fee regulations as early in the fiscal year as is practicable to give

as much time as possible for licensees to plan for changes in fees.

III. Final Action

The NRC is amending 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, and by an additional $0.5 million for billing adjustments (*i.e.*, 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). This leaves approximately $538 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 $157.5 million will be recovered in FY 2005 from part 170 fees and other offsetting receipts. The NRC derived this estimate based on the previous four quarters of billing data for each license class, with adjustments to account for changes in the NRC's FY 2005 budget as appropriate. The remaining $380.5 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. This fee recovery reduction is in accordance with the FY 2001 Energy and Water Development Appropriations Act. The 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.

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

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2005

[Dollars in millions]

Total Budget Authority	$669.3
Less NWF	−68.5
Balance	$600.8
Fee Recovery Rate for FY 2005	[1] ×90.0%
Total Amount To Be Recovered for FY 2005	$540.7
Less Carryover from FY 2004	−2.2
Less Part 171 Billing Adjustments	
Unpaid FY 2005 Invoices (estimated)	2.7
Less Payments Received in FY 2005 for Prior Year Invoices (estimated)	−3.2
Subtotal	−0.5
Amount To Be Recovered Through Parts 170 and 171 Fees	$538.0
Less Estimated Part 170 Fees	−157.5
Part 171 Fee Collections Required	$380.5

[1] Percent.

The FY 2005 final fee rule is a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2005 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2005 final rule. For these licensees, payment is due on the effective date of the FY 2005 rule. Those materials licensees whose license anniversary date during FY 2005 falls before the effective date of the final FY 2005 rule will be billed for the annual fee during the anniversary month of the license at the FY 2004 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2005 rule will be billed for the annual fee at the FY 2005 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC has discontinued mailing the final fee rule to all licensees as a cost saving measure, in accordance with its FY 1998 announcement. Accordingly, the NRC does not plan to routinely mail the FY 2005 final fee rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of Financial Management, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees@nrc.gov*. In addition to publication in the Federal Register, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule, and will permanently be available at *http://www.access.gpo.gov*.

The NRC is amending 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is revising the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates and the results of the agency's biennial review of fees required by the CFOs Act of 1990. Additionally, the NRC is revising part 170 to provide for the assessment of full cost fees for licensee-specific activities

resulting from most orders and decommissioning activities associated with unlicensed sites; clarify that part 170 fee waivers need to be requested from, and granted by, the CFO in writing in certain instances; notify licensees that the NRC intends to apply its existing full cost recovery policy for project managers to license renewal project managers; and make minor administrative changes, including those to enhance consistency between the fee categories used in part 170 and part 171.

The amendments are as follows:

1. Hourly Rates

The NRC is revising the two professional hourly rates for NRC staff time established in § 170.20. These rates are based on the number of FY 2005 direct program full time equivalents (FTEs) and the FY 2005 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The rate for the reactor program is $205 per hour ($296,782 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The rate for the materials program is $197 per hour ($285,336 per direct FTE). This rate is applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2005 proposed fee rule, the reactor program rate was $205 and the materials program rate was $198. The materials program rate decreased by one dollar between the FY 2005 proposed and final rules due to the movement of some budgeted resources from the materials program to the surcharge. 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 from FY 2004 is primarily due to the NRC's use of a revised estimate of the number of direct hours per FTE in calculating these rates. The recent Government-wide pay raise is another reason for the proposed increase in the hourly 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 revising its estimate of direct hours per FTE to more accurately reflect the NRC's costs of providing part 170 services, which will allow the NRC to more fully recover the costs of these services through part 170 fees, a result sought by several commenters as discussed earlier. 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) will result in a reduction to total annual fees of the same amount. As such, this hourly rate increase will shift some fee recovery from part 171 annual fees to part 170 fees for licensee-specific services. (As previously discussed, because the invoices reflecting these increased part 170 fees will not be paid by licensees until FY 2006—in light of the effective date of the final rule and the timing of the NRC's regular billing cycle—the reduction in annual fees from this change will 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 OMB Circular A–76, "Performance of Commercial Activities." However, this Circular provides 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 estimate from Circular A–76 includes time for administrative, training, and other activities a direct program FTE may perform that, while relevant to consider for certain costing purposes, would more accurately be considered overhead. Therefore, this estimate should not be assumed to be "direct" time for purposes of calculating a rate per hour of direct activities, which is the intended purpose of the NRC's hourly rates. While the 1,776 estimate would be a useful fee calculation input were more detailed information not available, the NRC has been collecting more detailed information from its new time and labor system since November 2001, which is now the NRC's established source of data for 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 330 hours per year (1,776 minus 1,446) that a direct FTE performs in administrative activities will now be recovered in a similar manner to overhead, the costs of which are included in the hourly rate.

The NRC recognizes that the 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, 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. By using an estimate of hours per FTE that reflects only direct staff time, the resulting hourly rates more accurately reflect the full cost of providing services under part 170. For this reason, the NRC believes that this 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. This change 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 will result in increased full cost fees for licensing and inspection activities, and increased materials flat fees for license applications. As previously noted, total part 171 annual fees will decrease by the same amount as the increase in total part 170 fees. This shift from part 171 to part 170 will be greater for those fee classes with a higher proportion of part 170 to part 171 work activities (*e.g.*, operating power reactors, uranium recovery and rare earth facilities). Because annual fees are adjusted to recover the remainder of the budgeted resources for a license fee class not recovered under part 170, the total estimated fees (parts 170 plus 171) recovered from a license fee class are the same regardless of the amount of the hourly rate, However, when implemented, higher hourly rates will result in some individual licensees paying less total fees than if this change were not enacted. This is true for those licensees for whom the NRC performs fewer hours of part 170 services than it does, on average, for a licensee in that class. Similarly, licensees for which the NRC performs more hours of part 170 services will 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. All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly based on 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 directly through either part 170 or 171 fees.

b. All non-program 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	$38.9M
Overhead Salaries & Benefits, Program Travel and Other Support	77.5M	17.7M
Allocated Agency Management and Support	125.9M	31.3M
Subtotal	353.9M	87.9M
Less Offsetting Receipts	−0.0M	−0.0M
Total Budget Included in Hourly Rate	$353.9M	$87.9M
Program Direct FTEs	1,192.5	308.2
Rate per Direct FTE	$296,782	$285,336
Professional Hourly Rate (Rate per direct FTE divided by 1,446 hours)	$205	$197

As shown in Table II, dividing the $353.9 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1,192.5) results in a rate for the reactor program of $296,782 per FTE for FY 2005. The Direct FTE Hourly Rate for the reactor program will be $205 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($296,782) by the number of direct billable hours in one year (1,446 hours). Similarly, dividing the $87.9 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (308.2) results in a rate of $285,336 per FTE for FY 2005. The Direct FTE Hourly Rate for the materials program will be $197 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($285,336) by the number of direct billable hours in one year (1,446 hours).

2. Fee Adjustments

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

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete 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 final 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 licensing fees are based on the average professional staff hours that 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 and amendments for export and import licenses remained the same for each of the five fee categories in §§ 170.21 and 170.31.

Although the biennial review indicated that processing times for most fee categories remained the same or decreased, the average processing times for some fee categories in §170.31 increased significantly as compared to the previous biennial review. The reasons for the increases are both administrative and technical. Administratively, several prior biennial reviews showed very small sample sizes of completed licensing actions in these categories; therefore, the NRC was reluctant to adjust fees based on the fluctuations that could result from small statistical samples. Thus, the hourly estimates on which these fees were based were legacies from many years ago. For the biennial review performed for the FY 2005 fee rule, a more meaningful sample size was reviewed, and therefore the new data were determined to be appropriate for including in the assessment of average processing times. A thorough review of the new data showed that the original fees were no longer representative of the complexity of the reviews and the amount of review time required to process the requests. Technically, program review practices have also changed in the past several years. The product vendors and device manufacturers are, in some cases, combining their submissions. This means that the NRC is reviewing more complex and substantial submittals, and that additional review is required to assure the continued quality and adequacy of technical and regulatory determinations. The NRC believes that the new license application fees in § 170.31, based on the most recent data, better reflect the resources associated with processing license applications than the prior year fees. Although these changes resulted in some significant fee increases, the NRC does note that the

affected fee categories are small in terms of the number of licensees that will be impacted.

The 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 professional staff hours needed to process the licensing actions multiplied by the revised materials program professional hourly rate for FY 2005. As previously noted, the revised higher hourly rate of $197 for the materials program is a key reason for the increases in the revised 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 revised fee per registration is $620, compared to the current fee of $610. The revised fee is based on the current estimated number of registrants, current annual resource estimates for the program, and the FY 2005 materials program hourly rate. 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.

As compared to the FY 2005 proposed fee rule, a few of the licensing fees in §§ 170.21 and 170.31 are slightly lower due to the decrease by one dollar in the materials program hourly rate between the FY 2005 proposed and final fee rules.

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 final rule.

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

The NRC is amending §§ 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 or other civil sanctions. Currently, part 170 fees are not assessed for amendments or other licensee-specific activities resulting from the requirements of Commission orders. This is because in cases where the order proposes the imposition of a civil penalty or other civil sanctions, the assessment of additional costs could be viewed as augmenting the amount of the civil penalty and could discourage licensees from contesting 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 or other civil sanctions, the NRC is revising its regulations to allow for full cost recovery of these activities under part 170 from NRC licensees. The NRC is not changing cost recovery for the development of these orders or for hearings requested on these orders; these costs will continue to be recovered under part 171 (unless the hearing falls within the purview of 10 CFR 170.11(a)(2) addressing fees for Presidentially-directed national security programs).

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 is recoverable under IOAA 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 NRC licensees? annual fees or through taxpayer-funded appropriations (*i.e.*, Department of Treasury's General Fund). Recovering the site-specific decommissioning costs associated with these unlicensed sites through part 170 fees is consistent with the full cost recovery provisions of IOAA and the OMB's guidance in Circular A–25, "User Charges." By recovering the costs of decommissioning activities from the owners or operators of these unlicensed sites, as NRC does from licensed sites, the NRC believes the fairness and equity of its fee schedule will be enhanced. Therefore, the NRC is adding a new category (14B) to 'Schedule of Materials Fees' at § 170.31 that will 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 will be renumbered as Category 14A.) Section 170.2 will 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.

However, in light of concerns raised by a commenter on the FY 2005 proposed fee rule regarding charging part 170 fees to unlicensed sites in decommissioning, the NRC is providing that this change will not be implemented until one year from the effective date of the FY 2005 final fee rule. The NRC believes that this will provide sufficient notice for these unlicensed sites to plan for these costs. Additionally, the NRC believes this delayed effective date may encourage unlicensed sites to complete their decommissioning work as quickly as practicable because work performed by the NRC for these sites before the implementation of this provision will not be subject to part 170 fees.

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 is clarifying this section by stating that this fee exemption applies only when it is requested from, and granted by, the CFO in writing. While this is consistent with current practice in requesting and granting these fee waivers, the NRC believes this revision will 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 (§ 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 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 final rule and will not implement it until the effective date of the final rule.

7. Administrative Amendments

The NRC is modifying the number or letter identifiers associated with fee categories listed in § 170.31, as well as making 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 will enhance the NRC's ability to track parts 170 and 171 fees for license categories and simplify communication to licensees about applicable fee categories. Additionally, the NRC is removing the last sentence of category 15A of § 170.31, which references that the category includes applications for export and import of radioactive waste, because the information contained therein is stated in the previous sentence.

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

1. Revise the reactor and materials programs 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 CFOs 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 or other civil sanctions;
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 being conducted under NRC oversight, effective one year from the effective date of the FY 2005 final fee rule;
5. Revise § 170.11 to clarify that certain fee waivers need to be requested from, and granted by, 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 administrative changes to § 170.31, including those 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 is revising 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 responsibility to Agreement States), eliminate 'size of reactor' as a reason for granting annual fee exemptions, and make certain administrative amendments. The amendments are as follow:

1. Annual Fees

The annual fees in §§ 171.15 and 171.16 will 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 $380.5 million, compared to $389.9 million for FY 2004.

The NRC is establishing annual fees for FY 2005 using the "rebaselining" method. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 final fee rule (60 FR 32218; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 final 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 licensees. 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 results in decreased annual fees compared to FY 2004 for five classes of licenses (operating 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, two categories (sub-classes) of licenses will have decreased annual fees, two categories' annual fees remain unchanged, while the remainder will have increased annual fees. The annual fee for industrial users of nuclear material (Category 3P), which is the largest materials users category and includes nearly 1,700 of the NRC's approximately 4,500 materials licensees, will not change. Considering all fee classes and categories, the increases in annual fees range from approximately two percent for a master materials license to approximately 267 percent for registrations issued for device or product safety evaluations. The decreases in annual fees range from approximately four percent for operating power reactors to approximately 53 percent for rare earth mills.

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 FY 2004 final rule was published (*i.e.*, this FY 2004 carryover was used to reduce the FY 2005 fees).

Annual fees changed for certain classes and categories of licensees between the FY 2005 proposed and final fee rules because of changes to part 170 revenue estimates (based on the latest billing data available) for certain license fee classes and a small increase in budgeted resources allocated to the surcharge. The changes in annual fees from the FY 2005 proposed to final fee rules range from a three percent decrease for the spent fuel/reactor decommissioning class to a nine percent increase for test and research reactors and uranium recovery facilities.

Table III shows the rebaselined annual fees for FY 2005 for a representative list of categories of licenses. The FY 2004 fee is also shown for comparative purposes.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2005

Class/category of licenses	FY 2004 annual fee	FY 2005 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,283,000	$3,115,000
Spent Fuel Storage/Reactor Decommissioning	203,000	159,000
Test and Research Reactors (Nonpower Reactors)	62,500	59,500
High Enriched Uranium Fuel Facility	4,573,000	5,449,000
Low Enriched Uranium Fuel Facility	1,533,000	1,632,000
UF_6 Conversion Facility	657,000	699,000
Conventional Mills	14,500	30,200
Transportation:		
Users/Fabricators	91,300	80,900
Users Only	7,400	4,300
Typical Materials Users:		
Radiographers	11,900	12,800
Well Loggers	4,600	4,100
Gauge Users (Category 3P)	2,500	2,500
Broad Scope Medical	25,000	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]

Category of costs	FY 2005 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.0
b. Agreement State oversight	8.2
c. Activities for unlicensed sites (includes decommissioning costs associated with unlicensed sites, formerly referred to as site decommissioning management plan activities not recovered under part 170; also includes activities associated with unregistered general licensees)	3.5
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	8.9
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)	5.9
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States [1]	13.9
b. Generic decommissioning/reclamation (except those related to power reactors)	10.5
Total surcharge costs	62.4
Less 10 percent of NRC's FY 2005 total budget (less NWF)	−60.1
Total Surcharge Costs to be Recovered	2.3

[1]This 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.

As shown in Table IV, $2.3 million is the total surcharge cost allocated to the various classes of licenses for FY 2005 (*i.e.*, that portion of the total surcharge not covered by the NRC's 10 percent fee relief). The NRC will continue to allocate these 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 surcharge costs allocated to each class will be included in the annual fee assessed to each licensee. The FY 2005 surcharge costs allocated to each class of licenses are shown in Table V. Separately, the NRC will 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. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge $M
	Percent	$M	Percent	$M	
Operating Power Reactors	74	2.1	82.5	1.9	4.0
Spent Fuel Storage/Reactor Decomm	.....	.....	4.7	0.1	0.1
Nonpower Reactors	.....	.....	0.1	0	0
Fuel Facilities	8	0.2	7.2	0.2	0.4
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	.....	.....	0.4	0	0
Total Surcharge	100	2.8	100.0	2.3	5.1

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

a. *Fuel Facilities.* The FY 2005 budgeted cost to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $24.1 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 partly from part 170 fuel facilities' revenue in FY 2004 including a one-time $2.1 million adjustment (increase) for revenue to account for fuel facilities fees that were improperly coded (*i.e.*, costs associated with the Duke Cogema Stone and Webster application) 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 fee increase is also due to an increase in budgeted resources for FTE for fuel facilities licensing and inspection activities. (These resources may not be entirely recovered under part 170 because of factors such as the existing hourly rates, which do not account for the time direct FTE spend on administrative activities, and because licensing resources spent on contested hearings are not generally recovered under part 170, in accordance with 170.11(a)(2).) 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 included in the NRC workpapers that are publicly available), licensees are grouped into categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

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

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

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
High Enriched Uranium Fuel	2	101 (38.0)	86 (58.1)
Uranium Enrichment	2	70 (26.3)	34 (23.0)

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
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 $24.1 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

Facility type	FY 2005 annual fee
High Enriched Uranium Fuel	$5,449,000
Uranium Enrichment	3,031,000
Low Enriched Uranium	1,632,000
UF_6 Conversion	699,000
Limited Operations Facility	641,000
Others	466,000

b. Uranium Recovery Facilities. The FY 2005 budgeted cost, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $701,810. Approximately $551,000 of this amount will be assessed to DOE. The remaining $151,000 will be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities. The annual fees for these facilities increased from FY 2004 to FY 2005 due to a slight increase in budgeted resources for this license fee class, and because the NRC estimates that a smaller proportion of these resources will be recovered under part 170. As previously discussed, another reason for the increase in annual fees in FY 2005 is that the uranium recovery fee class was reduced by four licensees (two of which paid annual fees) because regulatory responsibility for these licensees was transferred to the State of Utah in accordance with an Agreement under Section 274 of the AEA of 1954, as amended, effective August 16, 2004. This resulted in fewer NRC uranium recovery licensees paying for the FY 2005 generic and other regulatory costs associated with the regulation of the NRC's uranium recovery licensees.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This will result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 50 percent of the surcharge and generic/other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$399,471
50 percent of generic/other uranium recovery budgeted costs	146,890
50 percent of uranium recovery surcharge	4,280
Total Annual Fee Amount for DOE	550,640
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50 percent of generic/other uranium recovery budgeted costs	146,890
50 percent of uranium recovery surcharge	4,280
Total Annual Fee Amount for Title II Specific Licenses	151,170

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 responsibility 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;

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

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

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

safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various categories of specifically licensed Title II uranium recovery licensees are as follows:

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of benefit total weight	
			Value	Percent
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

Applying these factors to the approximately $151,000 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

Facility type	FY 2005 annual fee
Class I (conventional mills)	$30,200
Class II (solution mining)	30,200
11e.(2) disposal	N/A
11e.(2) disposal incidental to existing tailings sites	30,200

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 for these facilities, and therefore has not established an annual fee for this fee category. If NRC issues a license for this fee category in the future, then the Commission will establish the appropriate annual fee by rulemaking.

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).

c. *Operating Power Reactors.* The approximately $311.6 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 $2,966,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2005 spent fuel storage/reactor decommissioning annual fee of $159,000. This results in a total FY 2005 annual fee of $3,115,000 for each power reactor licensed to operate. While budgeted resources for power reactors increased somewhat in FY 2005, annual fees will decrease because the NRC estimates that it will collect more of these resources through part 170 fees to power reactors.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2005, budgeted costs of approximately $19.4 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 122 licensees (with the exception of a new license issued on November 30, 2004, which will pay an 83 percent prorated annual fee), resulting in a FY 2005 annual fee of $159,000 per licensee. Annual fees will decrease for these licensees due to a reduction in budgeted resources for the spent fuel storage/reactor decommissioning fee class compared to FY 2004, and an increase in projected fee recovery from part 170 fees for this license fee class.

e. *Test and Research Reactors (Nonpower Reactors).* Approximately $238,000 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 $59,500 for each licensee. While budgeted resources for test and research reactors increase in FY 2005, annual fees will decrease due to a projected increase in the proportion of these resources recovered through part 170 fees to test and research reactors.

f. *Rare Earth Facilities.* The FY 2005 budgeted costs of $73,700 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 $73,700. While total budgeted resources for the rare earth fee class increase in FY 2005, this increase is due to licensee-specific activities, the costs of which will be recovered under part 170. The annual fee for the operating rare earth facility will decrease due to a slight decrease in generic activities performed for this license fee class compared to FY 2004.

g. *Materials Users.* To equitably and fairly allocate the $26 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 base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. 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. (Large percentage increases in certain materials users fee categories, *e.g.*, 3H, 3I, 9A, and 9B, are

the result of significant changes to these average professional staff time estimates, as discussed previously.) 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 $20.9 million in general costs and is 1.27 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 medical use licenses.

The annual fee assessed to each licensee also includes a share of the $92,000 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $507,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d). Because the budgeted resources for this class of licensees increased in FY 2005, annual fees will increase for most of the fee categories in this class.

h. *Transportation.* Of the approximately $4.3 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 $80,900 for each of the holders of quality assurance plans that authorize use and design/fabrication. Fees will decrease for transportation licensees in FY 2005 due to a reduction in budgeted resources allocated to this fee class compared to FY 2004.

2. Small Entity Annual Fees

The NRC stated in the FY 2001 final 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 CFOs 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 fees for many of these selected categories of materials licensees will 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.

Therefore, the NRC is retaining 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 August 10, 2004, the NRC approved an Agreement with the State of Utah under Section 274 of the AEA of 1954, as amended. This Agreement transferred to the State the Commission's regulatory responsibility for uranium mills and mill tailings sites. 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 9, 1990.

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 decommissioning and 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, including uranium recovery licensees, 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 modifying § 171.11(c) to eliminate 'size of the reactor' as a consideration in evaluating annual fee exemption requests. 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 are still licensed to operate. The NRC has not issued waivers on the basis of size for several years. 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 small relative to the 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 consideration in evaluating annual fee exemption

requests, is no longer needed. No other class of licensee contains an exemption provision based on size.

5. Administrative Amendments

The NRC is eliminating 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 is an administrative change that is being made to streamline the fee schedule because 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 will determine its annual fee amount by the fee subcategory assigned to its license, as is the practice for other licensees.

Additionally, the NRC is modifying §§ 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 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 eliminating the phrase, 'not covered under part 170.' (Note that once the regulatory revision to charge unlicensed sites in decommissioning, as previously discussed, is implemented, this surcharge category will not include part 170 activities associated with these sites.) In addition, activities associated with unregistered general licensees are included in this surcharge category.

Finally, the NRC is including, for each fee subcategory listed in the 'Schedule of Materials Annual Fees and Fees for Government Agencies Licensed by NRC' at § 171.16(d), a unique number or letter identifier, and minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171. The changes will 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 has—

1. Established rebaselined annual fees for FY 2005;

2. Retained the current reduced fees for small entities;

3. Adjusted the annual fees to reflect changes in Agreement State activities;

4. Modified § 171.11 to eliminate 'size of reactor' as a consideration in evaluating annual fee exemption requests; and

5. Eliminated reference to specific facility names under Category 1.A of § 171.16, revised §§ 171.15 and 171.16 to clarify the activities that comprise the annual fee surcharge, and make other minor administrative changes to enhance the consistency of fee categorizations between parts 170 and 171.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2005 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

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

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY

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

The Small Business Regulatory Enforcement Fairness Act of 1996 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 final rule and that a backfit analysis is not required for this final 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

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

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

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

* * * * *

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

■ 3. In § 170.11, paragraphs (a)(1)(iii)(A)(*1*) and (*2*) are revised and paragraph *(3)* is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) * * *

(iii) * * *

(A) * * *

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

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

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

* * * * *

■ 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 requalification 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): $197 per hour.

■ 5. In § 170.21, Category K in the table and footnote 1 are revised, and footnote 4 is added 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 facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment	$12,800
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
4. Application for export of facility components and equipment (examples provided in 10 CFR part 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
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 or other civil sanctions 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 or other civil sanctions, 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.

* * * * * * *

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

■ 6. Section 170.31 is revised to read as follows:

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

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

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium)	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations	Full Cost.
(b) All Others	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and Inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$910.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A.[4]	
Application	$1,800.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Class I facilities [4]	Full Cost.
(b) Class II facilities [4]	Full Cost.
(c) Other facilities [4]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4).	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2).	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$220.
C. All other source material licenses:	
Application	$7,800.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$9,200.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$3,500.
C. Licenses issued under §§32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$4,700.
D. Licenses and approvals issued under §§32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4).	
Application	$3,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$2,300.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$4,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$11,000.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$13,500.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$8,000.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,400.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$810.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$7,800.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$3,100.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$3,500.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$3,200.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,100.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Registration	$620.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,400.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$3,600.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$1,300.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$15,700.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$8,600.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,200.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
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	$450.
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	$19,300.
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	$19,300.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$2,200.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$750.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
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.	
Application	$5,200.
Inspections	Full Cost.
2. Users.	
Application	$5,200.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices):	
Licensing and inspection	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
Inspections	Full Cost.
B. Inspections related to storage of spent fuel under §72.210 of this chapter	Full Cost.
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. Part 170 fees for these activities will not be charged until (insert date 1 year from effective date of final rule).	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).	
Application—new license, or amendment	$12,800.
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.	
Amendment	$300.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800.
17. Master materials licenses of broad scope issued to Government agencies	[5] N/A
18. Department of Energy	
A. Certificates of Compliance	[5] N/A
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	[5] N/A

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

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

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

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

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, 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 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 70.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] The NRC does not charge part 170 fees to Federal agencies, per 31 U.S.C. 9701.

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

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

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

§ 171.11 [Amended]

■ 8. Section 171.11 is amended by removing paragraph (c)(2), and redesignating paragraphs (c)(3), (c)(4), and (c)(5) as paragraphs (c)(2), (c)(3), and(c)(4), respectively.

■ 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 $3,115,000.

(2) The FY 2005 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2005 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(I) and (ii) of this section. The activities comprising the FY 2005 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2005 base annual fee for operating power reactors are as follows:

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

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

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

(c)(1) The FY 2005 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel onsite and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $159,000.

(2) The FY 2005 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2005 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2005 spent fuel storage/reactor decommissioning rebaselined annual fee are:

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

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

(d)(1) The activities comprising the FY 2005 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, decommissioning activities for unlicensed sites, and activities for unregistered general licensees); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (*e.g.*, reviews and inspections conducted of nonprofit

educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

(2) The total FY 2005 surcharge allocated to the operating power reactor class of licenses is $4 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2005 operating power reactor surcharge to be assessed to each operating power reactor is approximately $38,100. This amount is calculated by dividing the total operating power reactor surcharge ($4 million) by the number of operating power reactors (104).

(3) The FY 2005 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $107,200. The FY 2005 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $880. 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—$59,500.
Test reactor—$59,500.

■ 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:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

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

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

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

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

(d) The FY 2005 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2005 surcharge are shown for convenience in paragraph (e) of this section. The FY 2005 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium)	$5,449,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel	1,632,000

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations	641,000
(b) All Others	466,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	2,100
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	5,700
E. Licenses or certificates for the operation of a uranium enrichment facility	3,031,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	699,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Class I facilities [4]	30,200
(b) Class II facilities [4]	30,200
(c) Other facilities [4]	73,700
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	30,200
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	750
C. All other source material licenses	13,400
3. Byproduct material:	
A. *Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for* processing or manufacturing of items containing byproduct material for commercial distribution	24,700
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	8,200
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3D	10,200
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	6,100
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)	4,300
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	7,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	26,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	18,300
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	11,100
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,800
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,700

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	6,100
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4A, 4B, and 4C	6,600
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,800
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	25,100
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	13,700
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	27,300
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,600
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	24,600
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	24,600
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,800
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	960
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	80,900
2. Users	4,300
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A

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

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
14. Decommissioning/Reclamation:	
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	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed	[7] N/A
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. Licenses 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 licenses for export and import of radioactive waste	[8] N/A
B. Licenses for export or import of nuclear material, radioactive waste, requiring Executive Branch review, but not Commission review. This category includes licenses 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	[8] N/A
C. Licenses 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	0N/A[8]
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	[8] N/A
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	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	251,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,097,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	551,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses 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.

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

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

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

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

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

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

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

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

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

(1) LLW disposal generic activities;

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

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses (*e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; decommissioning activities for unlicensed sites; and activities for unregistered general licensees); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR part 170 based on existing law or Commission policy (*e.g.*, reviews and inspections of nonprofit educational

institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 6th day of May, 2005.

For the Nuclear Regulatory Commission.

Peter J. Rabideau,

Acting Chief Financial Officer.

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

Appendix A to This Final Rule—Final Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

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

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2005 is approximately $540.7 million.

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

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

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

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2005. Rebaselining fees will result in decreased annual fees for the majority of the fee classes of licensees. However, annual fees will increase for other classes including most materials licensees in the materials users class.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2005 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 26 percent of these licensees (approximately 1,200 licensees for FY 2004) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

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

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

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

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

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

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

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

The NRC has reexamined its previous evaluations of these alternatives and

continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

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

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

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

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

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

The NRC examined the small entity fees again in FY 2003 (68 FR 36717; June 18, 2003), and determined that a change was not warranted to the small entity fees established in FY 2003. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule 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 CFOs Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2005, and does not believe that a change to the small entity fees was warranted. 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.

Therefore, the NRC is retaining 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.

Attachment 1 to Appendix A—U. S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2005

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Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2005 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2005 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook,"

NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at *fees@nrc.gov*. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

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 based on employment 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.[1]

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 a small entity under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small business not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov*. The form can then be accessed by selecting "License Fees" and under "Forms" selecting NRC Form 526. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7554, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

(1) File a separate NRC Form 526 for each annual fee invoice received.

(2) Complete all items on NRC Form 526, as follows:

a. 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.

(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

[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.

amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(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 is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a "possession only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration." This means that the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1,150 or $250 for each fee category billed (instead of the full small entity annual fee of $2,300 or $500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

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