

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH83

Revision of Fee Schedules; Fee Recovery for FY 2006

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) 2006, less the amounts appropriated from the Nuclear Waste Fund (NWF) and for Waste Incidental to Reprocessing (WIR) activities. The required fee recovery amount for the FY 2006 budget is approximately \$624 million, which is increased by approximately \$0.9 million to account for billing adjustments, resulting in a total of approximately \$625 million that must be recovered through fees in FY 2006.

EFFECTIVE DATE: (Insert date 60 days after publication).

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 email 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 website (<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, D.C. 20555-0001.

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I. Background

For FYs 1991 through 2000, OBRA-90 (Pub. L. 101-508), 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 (Pub. L. 106-377) 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 was 90 percent in FY 2005. The FY 2006 Energy and Water Development Appropriations Act (EWDAA)

(Pub. L. 109-103), as amended by the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148), extended this 90 percent fee recovery requirement through FY 2006. As a result, the NRC is required to recover approximately 90 percent of its FY 2006 budget authority, less the amounts appropriated from the NWF and for WIR activities, through fees. The required fee recovery amount for the FY 2006 budget is approximately \$624 million, which is increased by approximately \$0.9 million to account for billing adjustments, resulting in a total of approximately \$625 million that must be recovered through fees in FY 2006.

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, as amended, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

The amount of the NRC's required fee collections are set by law and are therefore outside the scope of this rulemaking. In FY 2006, the NRC's total fee recoverable budget increased by \$83.4 million from FY 2005 in response to increased workload. As such, most annual fees increased. The budget, including the increases, was allocated to the fee classes that the budgeted activities support. As discussed in more detail below, another factor affecting

the amount of annual fees for each fee class is the estimated collection under part 170.

Additional factors will affect the NRC's required fee recovery in future years. For example, the Energy Policy Act of 2005 (Pub. L. 109-58) permanently extends the 90 percent fee recovery requirement beginning in FY 2007. The Energy Policy Act also permanently removes certain homeland security activities from the fee base beginning in FY 2007. Section 637 states that the NRC will not recover in fees:

“(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections.”

Under this legislative requirement, the budgeted resources for all generic homeland security activities (those activities that support an entire license fee class or classes of licensees, such as rulemakings, guidance development, and vulnerability assessments) will be removed from the fee base beginning with the FY 2007 fee rulemaking. Under the NRC's authority under the IOAA, the NRC will continue to bill under part 170 for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews. This legislative change will provide fee relief for NRC licensees. However, the net change in annual fees in FY 2007 will also depend on other factors, especially the amount of the NRC's FY 2007 appropriated budget and the allocation of these resources to the license fee classes and surcharge categories (surcharge categories include the resources associated with activities for

which the NRC does not charge fees, as described in more detail in Section III of this document), as well as any other policy decisions of the Commission.

II. Response to Comments

The NRC published the FY 2006 proposed fee rule on February 10, 2006 (71 FR 7350) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received three comments dated on or before the close of the comment period (March 13, 2006) and four additional comments thereafter, for a total of seven comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Information Provided by NRC in Support of Proposed Rule

Comment. Several commenters requested a more detailed explanation of significant fee increases. These comments requested that the NRC provide licensees and the public with a reasonably detailed listing of the major activities and their associated impact on the fees. These commenters expressed concern that the information provided to support the proposed rule was not adequate to allow for the full evaluation and comment on the proposed fee rule. While these comments acknowledged the availability of the work papers that provided information on the FY 2006 budget, they requested NRC provide an itemized accounting of the major elements that comprise the annual assessment under part 171, including a detailed description of the major contracts currently outstanding. One set of comments set forth 26 specific questions on why budgeted resources increased from FY 2005 to FY 2006 in a number of areas. One comment

stated that while the proposed rule stated that the FY 2006 included budget increases for new plant licensing and security, no information was available that would allow for the identification of the contribution of either security or new plant licensing toward the fee increase.

These commenters further stated that industry's ability to evaluate the NRC's application of resources and priorities is impeded because the NRC allocated 70 percent of its recoverable budget to the generic assessment under part 171, while only 30 percent is recovered under the discrete fee provisions of part 170. One commenter stated that there was an expectation that generic fees would be reduced as new plant applications are filed and costs are charged directly to an applicant under 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 2006 budget authority, less the amounts appropriated from the NWF and for WIR activities, from applicants and the various classes of NRC licensees. As with each year's fee rulemaking, the FY 2006 proposed fee 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. Additional summary calculations were provided in the FY 2006 proposed fee rule: For each fee class, a table was presented showing the aggregate calculations (e.g., total budgeted resources and estimated part 170 collections). For each fee class, there was also a summary explanation provided for the changes in fees and budgeted resources.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in 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 budgeted resources at the planned activity level for all agency activities. These papers present an itemized accounting of all the budgeted resources included in the fees, at the lowest level of detail available agency-wide. The papers included 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 budgeted costs included in the hourly rates.

Also to assist commenters, the NRC made available NUREG-1100, Volume 21, "Performance Budget: Fiscal Year 2006" (February 2005), which discusses the NRC's budget for FY 2006, including the activities to be performed in each program. This document is 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. 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 the FY 2006 proposed fee rule work papers, the NRC improved the organization of some of the reports to allow for increased transparency. For example, a separate document was created for each fee class and surcharge category to show the budget allocations for FY 2006 and FY 2005 at the planned activity level, thereby making it easier to see the reasons for any fee changes between FY 2006 and FY 2005. Accordingly, the proposed rule showed the total value

of budgeted resources allocated to a fee class and described the major reasons for any fee change(s), and the supporting work papers clearly set forth the changes in budgeted resources for each class at the planned activity level for both FTE and contract dollars. For example, the proposed fee rule stated that the power reactor annual fee increased due to an increase in budgeted resources for activities such as regulatory infrastructure for new reactor licensing activities (other examples were also provided). The work papers showed that the budgeted resources for that planned activity increased by approximately 42 FTE and \$2.9 million in FY 2006, as compared to FY 2005.

In response to the comments with numerous detailed questions requesting information on why the budget increased for certain planned activities from FY 2005 to FY 2006, or requesting additional information on the use of resources under a specific planned activity, the NRC notes again that the purpose of this rulemaking is to establish fees to recover most of the NRC's budget, as required by OBRA-90, as amended. The NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. The NRC's budget is submitted to the Office of Management and Budget (OMB) and Congress for review and approval. The Congressional budget process involves 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.

The purpose of the FY 2006 fee rulemaking, as with prior year fee rulemakings, is to establish fees in a fair and transparent manner to recover the required portion of the NRC's budget. As such, the purpose of these rules is not to justify the use or need for current year

budgeted resources, but to describe and take comment on the allocation of these resources for fee calculation and purposes. For example, the rule and supporting work papers are not intended to justify why the budgeted resources for a given planned activity increased by a particular percentage. (Note, however, the Performance Budget for each fiscal year does provide the objectives of the budget and how it supports the agency's Strategic Plan goals and strategies, and this justification is part of the Congressional approval and Executive Branch review process.) The rule and work papers show the value of the approved budgeted resources, and most importantly for fee calculation purposes, the fee classes and surcharge categories to which these resources are allocated. As mentioned previously, the work papers provide this information at the lowest level of detail available at the agency-level, which is by planned activity.

Regarding the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, as discussed in previous fee rulemakings, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, because fee allocation is controlled by statute. The NRC assesses part 170 fees under the IOAA, consistent with implementing OMB Circular A-25, "User Charges," 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, as amended, 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, beginning with the FY 2005 fee rule (70 FR 30526; May 26, 2005), the NRC revised its hourly rate calculation formula to better reflect actual agency costs, resulting in higher hourly rates. These higher hourly rates increased fee recovery under part 170.

Similarly, in response to the comment that reactor generic fees should be reduced as new plant applications are filed and costs are charged directly to an applicant under part 170, the Commission notes that it recovers (and will continue to recover) the costs of all specific work relating to the review of new reactor or design applications and pre-application activities through part 170 fees. For example, the FY 1999 policy that established part 170 fee recovery for all project managers assigned to a license or plant, applies to project managers assigned to new reactor applications and pre-application reviews. All other specific activities for these reviews are also recovered through part 170 fees. This part 170 fee recovery reduces the amount of budgeted resources that must be recovered through annual fees to reactor licensees.

B. Specific Part 170 Issues

1. Hourly Fees

Comment. Several commenters expressed concerns about the increases in the NRC's hourly rates associated with the proposed changes to 10 CFR 170.20. These commenters noted that the increases exceeded the rate of inflation, and requested the NRC investigate ways to reduce the hourly fees.

Response. The NRC's hourly rates are based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. As discussed in the proposed fee rule, the increases to the Nuclear Reactor Safety (Reactor) Program and Nuclear Materials and Waste Safety (Materials) Program rates are due to the recent Government-wide pay raise and the more accurate allocation of agency overhead to these programs and fee-exempt activities. The hourly rates are calculated to recover all of the budgeted costs supporting the services provided under part 170, including all programmatic and agency overhead, consistent with the full cost recovery concept emphasized in OMB's Circular A-25, "User Charges." The NRC did not receive any comments on ways to revise the hourly rate calculation methodology, and notes that other comments, on this fee rulemaking and others, have consistently supported the NRC in its efforts to collect more of its budget through part 170 fees-for-services vs. part 171 annual fees. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2006 proposed fee rule. This results in hourly rates of \$217 for the Reactor Program, and \$214 for the Materials Program. The NRC recognizes that the higher hourly rates will have a greater impact on licensees that receive more part 170 services, but believes this is appropriate because the new rates more accurately reflect the costs of providing these services.

2. Invoice Information

Comment. Several commenters stated that the Commission should continue its efforts to provide invoices that contain more meaningful descriptions of the work done by staff and especially contractors. These comments stated that in the private sector, adequate explanations, dates and times are provided to clients for clients to fully understand the work performed. One commenter stated that if the agency performs a large amount of work on a submittal from a single licensee, billings should be frequent so that a licensee is better able to track costs.

Response. The NRC appreciates the comments on this topic, and believes that sufficient information is provided to licensees or applicants on which to base payment of invoices. The NRC's invoices for full-cost licensing actions and inspections contain details such as the type of service for which the costs are being billed, the name of the person or contractor performing the service, the date range the service was performed, the number of professional staff-hours expended in providing the service, the hourly rate, and the contractual costs incurred. These costs are billed quarterly, which the NRC believes is an adequate frequency to track and pay for these costs. Additionally, a licensee or applicant who does not understand the charges, or who would like more information to interpret the bill, may request additional information from the NRC regarding the specific bill in question. The NRC will provide all available data used to support the bill in response to this type of request.

3. Part 170 Fees to Federal Agencies

Comment. One commenter supported the Commission's proposal to charge Federal agencies for specific services provided by the NRC, agreeing that it is fair and appropriate to assess these fees to Federal agencies in the same manner as other NRC licensees.

Response. The NRC appreciates the support for this proposal, and is enacting this policy change in this rulemaking, as described in more detail in Section III.A.3.

C. Specific Part 171 Issues

1. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received four comments objecting to the large increase in the annual fees for uranium recovery licensees. Some of these commenters expressed concerns that the FY 2006 proposed fee structure appears to unfairly discriminate against the uranium recovery section by imposing a 120 percent increase in annual fees, and requested that any required fee increase be similar to increases for other classes of licensees. Some 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, some commenters stated that the NRC needs to address the issue of decreasing numbers of uranium recovery licensees. Specifically, the concern was raised that 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.

Some of these commenters acknowledged that the reallocation of existing FTE to uranium recovery licensing and inspection activities from other activities may be warranted, considering market forces and expected licensing activities. These commenters stated that fee increases might be more acceptable if they were accompanied by more timely licensing actions, but some commenters expressed concerns that there are still too few NRC staff on uranium recovery issues, and some of these staff are relatively new to the field. Some commenters also stated that the continued existence of remaining uranium recovery facilities is in the public interest given the renewed interest in nuclear power, and stated that large fee increases for these facilities is not in the public interest. These commenters noted a previous Commission comment which indicated the existence of a uranium recovery facility was in the public interest. One commenter noted that the increased fees and uncertainty of the timely review of licensing actions makes it difficult for licensees to manage costs, which could create a chilling effect on the development of new domestic uranium recovery facilities.

Response. The NRC acknowledges that the FY 2006 uranium recovery annual fee of \$65,900 is significantly higher than the annual fees charged to these facilities in FYs 2005 and 2004. (For FYs 2005 and 2004, the NRC overestimated the part 170 collections it would receive from uranium recovery facilities, which resulted in lower part 171 annual fees.) However, the FY 2006 uranium recovery annual fee amount is more similar to the annual fee amounts for FYs 2001 through 2003, when, for example, the annual fee for conventional mills ranged from approximately \$53,000 to \$111,000. 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.

As explained in the proposed rule, the higher FY 2006 annual fee for uranium recovery licensees reflects an increase in budgeted resources for this fee class. The NRC appreciates the acknowledgment that this budget change may be warranted to support uranium recovery licensees. In response to the concern about the NRC's staffing of uranium recovery issues and the timeliness of the review of licensing actions, these issues are outside the scope of this rulemaking. However, as noted in the FY 2005 final fee rule (70 FR 30526; May 26, 2005), 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.

In response to concerns regarding decreasing numbers of NRC licensees in light of more states becoming Agreement States, the NRC notes the concerns that the 'last NRC licensee' may have to pay for the cost of the entire uranium recovery program are unfounded because the NRC's fee calculation methodology considers the percentage of uranium recovery licensees in Agreement States in establishing fees for the uranium recovery fee class. As explained in the FY 2005 final fee rule, the budgeted resources providing support to Agreement States or their licensees are included in total surcharge costs, which are offset by non-fee recovery funding provided by Congress. For example, if the NRC develops a rule, guidance document, or 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 are 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 was 90 percent in FY 2005. 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. (Note generic decommissioning costs for the materials program are also included in the surcharge.)

In FY 2006, \$3.5 million of the \$72.8 million in total surcharge costs was not covered by the 10 percent fee relief, and therefore is included in licensees' annual fees. Eighty-four percent (the percentage of the budget associated with reactors) of the \$3.5 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 2006, the total surcharge cost allocated to the entire uranium recovery class is approximately \$13,000. Because DOE is charged 50 percent of the total surcharge cost (as well as 50 percent of all generic resources associated with the uranium recovery fee class) for its UMTRCA Title I licensees, consistent with the methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), this leaves approximately \$6,500 in total surcharge costs allocated to NRC Title II program licensees that are subject to annual fees.

This means about \$1,300 of the \$65,900 FY 2006 annual fee per uranium recovery license is attributable to activities that do not directly benefit these uranium recovery licensees. The remainder of the annual fee reflects the budgeted resources associated with the regulation of

NRC's uranium recovery licensees, as shown in the detailed work papers made available to support the proposed rulemaking. As such, the NRC believes there is a strong relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from this program.

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 of 1954, as amended, effective August 16, 2004. There are currently six uranium recovery licensees, including a license for the DOE, paying for the generic and other regulatory costs associated with the regulation of the NRC's uranium recovery licensees. 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 fewer the licensees, the larger the impact this has on the annual fee per license. (Because these budgeted resources are for site-specific inspection and licensing activities, they are not prorated to the surcharge category of Agreement State Regulatory Support because the resources are budgeted for the purpose of supporting only NRC licensees.) 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.

In response to comments about the existence of uranium recovery facilities being in the public interest, and the potential economic consequences of fees on this industry, the NRC notes it has addressed similar comments 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, as amended, 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 potential economic consequences. Instead, the NRC has only considered the impacts that it is required to address by law.

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.

2. Annual Fees for Fuel Facilities Licensees

Comment. One commenter expressed concern over the increase in annual fees for fee category 2.A.1, UF₆ conversion facilities. The commenter expressed concern that the fee increase was not explained in sufficient detail. In particular, the commenter did not believe the changes in the fuel facility fee matrix (i.e., the value of the effort factors for fee category 2.A.1) were explained in enough detail to allow for informed public comment. This commenter also stated that any fees for future 10 CFR part 40 or conversion facility rulemakings not be allocated to fee category 2.A.1.

Response. The NRC established the methodology for calculating annual fees for individual fuel facilities through public notice and comment rulemaking (64 FR 31448; June 10, 1999), and the FY 2006 fee rulemaking uses this same methodology. This methodology establishes that the total budgeted resources for fuel facilities are allocated to individual fuel facility fee categories based on the effort/fee determination matrix. This methodology was also described in detail in the FY 2006 proposed fee rule. In addition, the publicly available work papers for the FY 2006 proposed rule provided detailed information on the FTE and contract resources for each planned activity that were allocated to the fuel facility fee class. The work papers also provided information on all the values of the effort factors used in the fuel facility matrix for FY 2006.

As noted in the FY 2006 proposed fee rule, the NRC revised the effort factors for the UF₆ conversion facility to better reflect the effort level associated with safeguards activities such as interim compensatory measures (ICMs). In response to the commenter's request for additional detailed information on the basis of the values of the effort factors, the NRC notes that before

September 11, 2001, this UF₆ conversion facility had a '0' for safeguards and security based on the fact that the facility had no security plan with the NRC. Shortly after September 11, 2001, NRC issued an Order to this facility requiring it to implement interim security upgrades. When the NRC performed security assessments and reviewed implementation of the ICMs in 2004, NRC determined (1) this UF₆ conversion facility needed to maintain additional security measures as part of its baseline program, and (2) NRC needed to perform routine oversight of the security program including licensing review of security measures, inclusion of security measures in the license as part of license renewal, and routine inspection of security programs. Therefore, based on the new routine level of NRC effort for this facility, its score increased from '0' to '5' in the matrix used for the FY 2006 fee rule, which is 'rebaselined' each year based on the most recent assessment by the program and technical experts responsible for the regulation of these facilities. Note that because of the timing of the fee rule each year, the fuel facility fee matrix represents a 'snapshot' of expected effort levels at the beginning of the fiscal year. Therefore, a change in effort level that occurs after that 'snapshot' may not be reflected until the next year.

Finally, in response to the comment that any fees for future part 40 or conversion facility rulemakings not be allocated to fee category 2.A.1, the Commission notes that it approved the initiation of a part 40 rulemaking on ground water protection at in situ leach uranium recovery facilities on March 24, 2006 (see Staff Requirements Memorandum - COMJSM-06-0001 - Regulation of Groundwater Protection at In Situ Leah Uranium Extraction Facilities; ML060830525). (While this is a part 40 rulemaking, it relates to uranium recovery facilities, not UF₆ or other fuel facilities.) In the referenced Staff Requirements Memorandum, the Commission stated, "The staff should plan on covering the costs of this rulemaking not through

part 171 fees for existing uranium recovery licensees, but instead through the surcharge, which is assessed to all NRC licensees paying part 171 fees.” As such, in the FY 2007 proposed fee rulemaking, the staff plans to propose to recover the costs of this rule through the surcharge. Note that the part 40 rulemaking was not budgeted for in FY 2006, and therefore there is no adjustment to the FY 2006 fees to reflect the fee recovery of that rulemaking through the surcharge. Additionally, there were no other part 40 or conversion facility rulemakings budgeted for in FY 2006, and therefore, the FY 2006 annual fee for the UF₆ conversion facility does not include any resources for these activities. The NRC will address the fee recovery of any other rulemakings that may be budgeted for in future years through its future year fee rulemakings.

3. Elimination of Fee Payment Exception for Uranium Recovery Licensees

Comment. Several commenters requested that the quarterly payment provisions for uranium recovery remain in effect, and that the NRC not begin billing these licensees annually. One commenter stated that quarterly payments allow licensees to better allocate budgetary outlays.

Response. While the NRC appreciates the concerns raised by the commenters, the NRC believes that there is insufficient justification for retaining the fee payment exception for Title II uranium recovery facilities, only. As discussed in the proposed rule, the NRC currently bills licensees’ part 171 fees annually if their annual fees are less than \$100,000, and quarterly if their annual fees are \$100,000 or more. However, the NRC bills Class I and Class II uranium recovery licensees quarterly in accordance with §171.19(b), regardless of the amount of their

annual fee. The NRC established this payment exception for Class I and Class II uranium recovery licensees in the FY 2001 final rule (66 FR 32452; June 14, 2001) because the annual fees for these licensees had been fluctuating just above or below \$100,000. Since then, uranium recovery license fees have been well below \$100,000. Because the basis of the existing exception is no longer a factor, as well as that the exception is administratively burdensome to implement with the current fee billing system, the NRC is eliminating this billing exception for Class I and Class II uranium recovery licensees.

Additionally, the NRC notes that there are benefits to the annual payment of fees, which it believes further justify this change. This is because the annual payment of fees may provide for more notice of annual fee changes. When paying quarterly, the last quarterly payment of the current fiscal year's annual fee must be for the entire difference between that annual fee and the payments made in the first three quarters of that year. This payment is due as of the effective date of the final fee rule. When paying annually, licensees are billed on the anniversary month of the license. This payment practice, as established in the FY 1996 fee rule (61 FR 16203; April 12, 1996), means licensees know exactly when they will be billed each year and will know the exact fee amount in advance.

D. Other Issues

1. Recovery of Security Costs

Comment. Some commenters objected to the NRC collecting security-related costs from licensees, while acknowledging that Section 637 of the Energy Policy Act of 2005 will remove certain homeland security activities from the fee base beginning in FY 2007. One commenter mentioned that homeland security costs should be off the fee base beginning in FY 2006. Other commenters questioned whether the funds under the 'Homeland Security Unallocated' planned activity in the proposed rule have been allocated to specific activities.

Response. The NRC appreciates the concerns raised by commenters regarding homeland security costs being funded through license fees. As referenced previously, generic (i.e., not site-specific) homeland security budgeted resources will be removed from the fee base beginning in FY 2007, per the Energy Policy Act of 2005. However, these resources are on the fee base in FY 2006. Therefore, the fees established in this rulemaking include homeland security budgeted resources, consistent with OBRA-90, as amended.

Regarding the question about the allocation of the 'Homeland Security Unallocated' planned activity, the NRC has now allocated these resources to specific activities, and then to the fee classes and surcharge categories which these resources support. Specifically, the \$4,498,000 under the 'HLS Unallocated' planned activity in the proposed rule has been distributed as follows: (1) \$808,000 to Nuclear Material Users/Homeland Security Information Technology, Control of Sources (for the Office of Nuclear Material Safety and Safeguards); (2) \$420,000 to Management and Support Information Technology Compliance/Homeland Security Information Security (for the Office of Nuclear Security and Incident Response); (3) \$420,000 to Reactor Licensing/Homeland Security Licensing/Homeland Security Mitigating Strategies (for the

Office of Nuclear Regulatory Research); and (4) \$2,850,000 to Reactor Licensing/Licensing Tasks/Risk Informing the Regulatory Process (for the Office of Nuclear Regulatory Research). As shown in the work papers, the resources for item 1 have been allocated to the materials users fee class (and prorated to the surcharge categories of Agreement State Regulatory Support and Nonprofit Educational Institutions), and the resources for items 3 and 4 have been allocated to the operating power reactor fee class. The resources for item 2 are treated as overhead, consistent with the treatment of other resources in the Management and Support Program. In the FY 2006 proposed fee rule, the resources associated with this planned activity were allocated to the fee classes in a manner consistent with how other homeland security resources were allocated.

2. NRC Budget

Comment. Several 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. Some of these commenters addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently. Some commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process, should result in a reduced budget. Some commenters 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, license new reactor designs, and process combined operating licenses for new plants. A number of comments suggested that Memorandums of Understanding between the Commission and non-Agreement States regarding the regulation of in-situ well fields would help

to reduce costs to licensees, as would the expansion of performance-based licensing and the increased use of Safety and Environmental Review Panels.

Response. The NRC appreciates the importance of identifying and implementing process efficiencies on an ongoing basis. As discussed in previous fee rulemakings, NRC offices conduct process reviews every year 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. As discussed previously, the NRC's budget is submitted to OMB and Congress for review and approval. 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, as amended, the fees are established to recover the required percentage of the approved budget. The NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

3. Fees Predictability and Timing/Requested Fee Increase Phase-Ins or Caps

Comment. Several commenters raised concerns that the timing of the issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. One commenter specifically noted that because the NRC's fiscal year differs from the majority of licensees' fiscal years, and fee recovery is not known until after a new calendar year begins, the process forces licensees to estimate potential changes to the

NRC fiscal year fee structure six to eight months in advance of the fee rulemaking. 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. Some 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. Some commenters suggested that the agency's projected total budget authority might be based on the five-year projection the Commission prepares as part of its annual budgeting process, and requested that this five-year projection be included in the Performance Budget each year (NUREG-1100 series). One commenter requested that the NRC's license fee estimates resulting from the anticipated FY 2007 budget be estimated and communicated to the commenter, with some confidence, by June 2006. Other commenters requested that NRC consider deferring a portion of the annual fee increase to the first quarter of 2007 to alleviate the unexpected burden imposed by large fee increases.

Some commenters suggested the Commission revisit the issue of arbitrary fee caps or combining fee classes to lessen the impact of fee changes. Some commenters expressed concern with hourly fees increases, because total hourly fees are more unpredictable than annual fees and create a substantial amount of uncertainty in a given licensee's annual costs.

Response. The NRC acknowledges the concerns raised by these commenters, and has addressed similar comments in previous fee rulemakings. However, the timing of the NRC's required fee collections is established by OBRA-90, as amended. In accordance with that statute, the NRC must collect the mandated level of fees by the end of the fiscal year to which

they are attributed, in this case September 30, 2006. As such, the agency does not have the discretion to delay the collection of these fees by deferring some fee increases.

Additionally, the timing of the fee rule each year is contingent upon when the NRC receives its Congressionally approved budget. The Commission makes every effort to issue the proposed fee rule as soon as possible after receiving its appropriations. 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. For example, the FY 2006 budget appropriation for the NRC reflected a significant increase over the NRC's initial FY 2006 budget request because of an increase in workload for new reactor and certain security activities. Had the NRC proposed or established preliminary fees based on the FY 2006 budget request, these estimated fees would have been quite different from the fees ultimately assessed to licensees. The fees reflected in this rulemaking reflect the final approved appropriation that was signed by the President on December 30, 2005 (Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006).

Changes in economic markets, as well as the security and policymaking environments, make predicting the NRC's future budgets even more difficult than this was previously. However, even if the NRC were able to reasonably predict a future year total budget, the annual fee amounts are also highly sensitive to other factors, including the allocation of these budgeted 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.

The NRC has previously 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). The NRC again considered these strategies in the FY 2005 fee rule and came to the same conclusion. 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.

In response to the comment that hourly rate charges are even more difficult to predict than annual fees, the NRC notes that, if requested, the NRC program staff will provide a best estimate of hours required to complete a specific licensing action, with the caveat that the actual hours expended may differ from that estimate based on certain circumstances (e.g., timeliness of submittals, quality of products submitted for review).

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2006 budget authority less the appropriations received from the NWF and for WIR activities. The NRC's total budget authority for FY 2006 is \$741.5 million, of which approximately \$45.7 million has been appropriated from the NWF, and \$2.5 million for WIR activities. Based on the 90 percent fee recovery requirement, the NRC must recover approximately \$624 million in FY 2006 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2006 is \$83.4 million more than the amount estimated for recovery in FY 2005, an increase of over 15 percent.

The FY 2006 fee recovery amount is increased by \$0.9 million to account for billing adjustments (i.e., for FY 2006 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2006 for FY 2005 invoices). There is no FY 2005 carryover to apply to FY 2006 fee collections. This leaves approximately \$625 million to be recovered in FY 2006 through part 170 licensing and inspection fees and part 171 annual fees.

The NRC estimates that approximately \$183.3 million will be recovered in FY 2006 from part 170 fees. This represents an increase of 19 percent as compared to the actual part 170 collections for FY 2005 of \$154.1 million. The NRC derived the FY 2006 estimate of part 170 fee collections based on the previous four quarters of billing data for each license fee class, with adjustments to account for changes in the NRC's FY 2006 budget, as appropriate, and the increase in the hourly rates from FY 2005 to FY 2006. The remaining \$441.7 million will be recovered through the part 171 annual fees in FY 2006, compared to \$380.5 million for FY 2005, an increase of approximately 16 percent.

Table I summarizes the budget and fee recovery amounts for FY 2006 (individual values may not sum to totals due to rounding).

TABLE I. - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2006

[Dollars in millions]

Total Budget Authority	\$741.5
Less NWF and WIR	<u>-48.1</u>
Balance	\$693.4
Fee Recovery Rate for FY 2006	<u>x 90.0%</u>
Total Amount to be Recovered For FY 2006	\$624.0
Less Carryover from FY 2005	<u>-0.0</u>
Plus Part 171 Billing Adjustments	
Unpaid FY 2006 Invoices (estimated)	3.2
Less Payments Received in FY 2006 for Prior Year Invoices (estimated) . . .	<u>-2.3</u>
Subtotal	<u>0.9</u>

Amount to be Recovered Through Parts 170 and 171 Fees	\$625.0
Less Estimated Part 170 Fees	<u>-183.3</u>
Part 171 Fee Collections Required	\$441.7

The NRC has made four updates to the FY 2006 fee calculations since the proposed rule. First, the NRC updated the part 170 estimates based on the latest invoice data available. In total, the part 170 estimates decreased by approximately \$5.4 million; approximately \$3 million of this reduction is from the power reactor fee class. Second, the NRC has updated its allocation of the 'Homeland Security Unallocated' planned activity, as described in Section II.D.1. This resulted in more budgeted resources allocated to the power reactor fee class, and less to fuel facilities and some other licensees in the Materials Program. Third, the NRC has adjusted downward the amount of generic transportation resources to be recovered from annual fees. This adjustment takes into account the annual fee collections received for transportation activities (fee categories 10.B.1 and 10.B.2 under §171.16) until the effective date of the FY 2006 final fee rule, which decreased the required fee collections for most fee classes (see Section III.B.3.h for details). (Note that this is only a one-time adjustment because the 10.B.1 and 10.B.2 annual fees have been eliminated as of the effective date of this rule. Therefore, licensees should expect the value of these allocated transportation resources to increase in future years.) Fourth, the number of NRC materials users licensees has been updated to reflect the transfer of approximately 150 licensees to the State of Minnesota. This adjustment was made because NRC entered into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended, effective March 31, 2006. This resulted in a slight increase in fees for some materials users licensees because fewer NRC licensees are paying for budgeted licensing and inspection costs. Each of these changes and their associated impacts on each fee class is discussed in more detail in Section III.B.3.

The net result of all these updates on the FY 2006 fees is small. Fees for most licensees remained the same between the FY 2006 proposed and final fee rules. The most significant change was a five percent increase in the test and research reactor annual fee, which resulted from a decrease in estimated part 170 fee collections for this fee class. Other fees increased or decreased by a small amount as a result of the changes listed in the preceding paragraph.

The FY 2006 final fee rule is a "major rule" as defined by the Congressional Review Act of 1996. Therefore, the NRC's fee schedules for FY 2006 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, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more, upon publication of the FY 2006 final rule. For these licensees, payment is due on the effective date of the FY 2006 rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2006 annual fee less payments made in the first three quarters of the fiscal year. Those materials licensees whose license anniversary date during FY 2006 falls before the effective date of the final FY 2006 rule will be billed for the annual fee during the anniversary month of the license at the FY 2005 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2006 rule will be billed for the annual fee at the FY 2006 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 2006 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 be permanently available at www.access.gpo.gov.

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

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 establishing hourly rates to recover the full cost of activities under part 170, and to use these rates to calculate “flat” application fees. Additionally, this rule establishes that Federal agencies are subject to part 170 fees (with the exception of certain Federally-owned test and research reactors); clarifies that the tracking and monitoring of shipments necessary for certain licensing actions is subject to full cost fees under part 170; establishes additional import/export fee categories (subclasses); and makes minor administrative changes for purposes of clarification, consistency, and to eliminate redundancy.

The NRC is making the following changes:

1. Hourly Rates.

The NRC is establishing in §170.20 two professional hourly rates for NRC staff time. These rates are based on the number of FY 2006 direct program FTEs and the NRC's FY 2006 fee recoverable budget, excluding direct program support costs. These rates are used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The rate for the Reactor Program is \$217 per hour. This rate is applicable to all activities for which fees are assessed under §170.21 of the fee regulations (with the exception of reactor decommissioning and import/export licensing activities). The rate for the Materials Program is \$214 per hour. This rate is applicable to all activities for which fees are assessed under §170.31 of the fee regulations, as well as the reactor decommissioning and import/export activities under §170.21. In the FY 2005 final fee rule, the Reactor and Materials Program rates were \$205 and \$197, respectively.

The increases to the Reactor and Materials Program rates from FY 2006 to FY 2005 are due to the recent Government-wide pay raise and to the more accurate allocation of agency overhead to these Programs and fee-exempt activities. The hourly rate for the Materials Program decreased slightly (from \$215 to \$214) between the FY 2006 proposed and final rules because of some minor reductions in the allocation of resources to this program because of the revised allocation of resources under the 'Homeland Security' planned activity (discussed in Section II.D.1).

The hourly rate is derived by dividing the sum of budgeted resources for (1) direct labor; (2) allocated program overhead; and (3) allocated agency overhead, by budgeted direct hours. This calculation is performed for both the Reactor and Materials Programs, and excludes the budgeted resources and associated overhead for fee exempt activities. The specific method used to determine the two professional hourly rates is as follows:

a. Direct program budgeted FTE, as well as all associated program overhead (FTE and contracts), are allocated at the planned activity level to the fee classes and surcharge (i.e., fee exempt) categories based on who benefits from these activities. Direct contract support, which is the use of contract or other services in support of the line organization's mission-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 management and support budgeted resources (FTE and contracts), including resources associated with the Office of the Inspector General, are allocated to each fee class and surcharge category based on the percent of the total budgeted resources allocated to each fee class and surcharge category in step a.

c. The hourly rate for the Reactor Program is calculated by dividing the total budgeted resources (calculated in steps a. and b.) allocated to the power reactor and test and research reactor fee classes by the direct hours allocated to those classes. Similarly, the hourly rate for the Materials Program is calculated by dividing the total budgeted resources allocated to the spent fuel/reactor decommissioning, fuel facility, transportation, materials users, uranium recovery, rare earth, and import/export fee classes by the direct hours allocated to those fee classes. Although an hourly rate for surcharge activities is not needed, the appropriate allocation of budgeted resources (including all associated overhead) and hours to the surcharge categories is calculated to ensure that these budgeted resources and hours are excluded from the Reactor and Materials Program hourly rates.

The direct hours used in the denominator of this hourly rate calculation continue to be calculated based on an estimate of 1,446 direct hours worked per direct FTE per year, as

established in the FY 2005 fee rule (70 FR 30526; May 26, 2005). As explained in the FY 2005 fee rule, this estimate is based on data from the NRC's time and labor system. The NRC continues to believe this estimate appropriately reflects the direct time expended per direct FTE.

Table II shows the results of this hourly rate calculation methodology. 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 2006 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor	Materials
	<u>Program</u>	<u>Program</u>
Direct Program Salaries & Benefits	\$182.4M	\$41.3M
Program Overhead Salaries & Benefits, and Contract Support	81.9M	17.8M
Allocated Agency Management and Support	<u>151.8M</u>	<u>34.0M</u>
Subtotal	416.1M	93.1M
Less Offsetting Receipts	<u>- 0.1M</u>	<u>-0.0M</u>
Total Budget Included in Hourly Rate	\$416.0M	\$93.1M
Program Direct FTEs	1,322.8	300.3
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Program Direct FTE times 1,446 hours)	\$217	\$214

As shown in Table II, dividing the \$416 million budgeted amount (rounded) included in the hourly rate for the Reactor Program by the Reactor Program direct hours (1,322.8 FTE times 1,446 hours) results in an hourly rate of \$217 for the Reactor Program for FY 2006. Similarly,

dividing the \$93.1 million budgeted amount (rounded) included in the hourly rate for the Materials Program by the program direct hours (300.3 FTE times 1,446 hours) results in an hourly rate of \$214 for the Materials Program in FY 2006. These hourly rates are rounded to the nearest whole dollar.

2. Fee Adjustments.

The NRC is adjusting the current part 170 fees in §§170.21 and 170.31 to reflect the changes in the hourly rates. The full cost fees assessed under §§170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2006 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application (flat fees) have been adjusted to reflect the change in the Materials Program professional hourly rate from FY 2005. The flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the Materials Program professional hourly rate for FY 2006. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101-578). (This review was last performed as part of the FY 2005 fee rulemaking.) The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be “de minimis.” Fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing flat fees are applicable for fee categories K.1 through K.5 of §170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.R, 16, and 17 of §170.31. The higher hourly rate of \$214 for the Materials Program is the reason for the increases in the licensing fees. Because the hourly rate decreased by one dollar between the FY 2006 proposed and final fee rules, some of the flat fees decreased by a small amount since the FY 2006 proposed fee rule. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this rule.

3. Charging Part 170 Fees to Federal Agencies/Fees for Research Reactors.

The NRC is amending §§170.11 and 170.31 to provide that part 170 fees will be assessed to Federal agencies where applicable. Under the Energy Policy Act of 2005 (Section 623), the NRC was granted authority to assess fees for specific services provided to any Federal government agency which applies to the NRC for, or is issued by the NRC, a license or certificate. The NRC currently recovers the costs of licensee-specific activities for non-Federal licensees, applicants, and certificate holders under part 170, but lacked the authority to assess these fees to Federal agencies (other than the Tennessee Valley Authority) until the effective date of the Energy Policy Act of 2005.

Because activities such as processing license applications provide a specific benefit to the recipient, the Commission believes it is fair and appropriate to implement this new authority and thereby recover the costs of providing specific services to Federal agencies through part 170 fees. The NRC has provided written notification to Federal agencies that have an NRC license or certificate that the NRC plans to implement this new authority in the FY 2006 final fee rule, so that they may include this cost in their budgets.

The Commission notes that this provision of the Energy Policy Act of 2005 cannot legally be applied to services the NRC provides to Federal agencies that are not NRC licensees, certificate holders, or applicants. Therefore, the NRC will not charge part 170 fees to Federal agencies for activities that are not subject to NRC licensing. Examples of NRC activities not related to a license or certificate, and therefore not subject to part 170 fees, include those to support the DOE in its decommissioning of the West Valley site in New York, and technical assistance provided to the Department of Transportation for certain foreign approved transport package designs for import/export (for which NRC does not have regulatory authority).

Under these changes to part 170, Federal agency licensees, certificate holders, and applicants will be assessed fees in the same manner as are non-Federal agency licensees, certificate holders, and applicants. This means that Federal agencies will be required to pay part 170 fees for NRC services provided, including reviews of applications and other licensing actions, inspections, and decommissioning activities. This change does not require the calculation of any new fee amounts or establishment of new fee categories for Federal agencies. The only exception is that the NRC is establishing a new flat application fee of \$17,800 for fee category 17, "Master materials licenses of broad scope issued to Government agencies," under §170.31. There is currently no application fee listed for this fee category because the only licensees in this fee category are for the Federal government. The flat application fee established in this rule was calculated in the same manner as other flat application fees; it equals the product of the average hours estimated to process these types of applications and the Materials Program hourly rate. Because of insufficient data on average processing times for these master materials licenses (there are only three such NRC licensees), the NRC based its estimate of average processing time for master materials licensees on other license applications of similar complexity.

Additionally, to implement this new authority, the NRC is revising fee category 18.A under §170.31 to specify that full cost fees will be assessed for licensing and inspection activities associated with DOE's part 71 Certificates of Compliance.

The NRC is exempting from part 170 fees Federally-owned test and research reactors that meet the fee exemption criteria set forth in Section 2903 of the Energy Policy Act of 1992 (Pub. L. 102-486). [These criteria relate to factors such as thermal power level and whether the reactor contains a liquid fuel loading, and are listed under both §§170.11(a)(9) and 171.11(a)(2). Three Federally-owned research reactors currently meet this criteria (reactors at the Veteran's Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland)]. As implemented by §171.11(a)(2), Federally-owned test and research reactors that meet the statutory criteria are already exempt from paying annual fees. At the time Congress enacted this fee exemption, however, Federally-owned reactors (other than the Tennessee Valley Authority) were not subject to part 170 fees. Therefore, the exemption criteria set forth in the Energy Policy Act of 1992 did not specifically address part 170 fees. Now that NRC has the authority to charge part 170 fees to Federally-owned reactors, the NRC believes that it is appropriate as a matter of policy to apply the same criteria to Federally-owned test and research reactors, and exempt those meeting the criteria from part 170 fees. State-owned reactors meeting this same criteria are currently exempt from part 170 fees under §170.11(a)(9). The Commission explained the rationale for this decision in the FY 1994 fee rule (59 FR 36895; July 20, 1994) by stating that the NRC believed this was "...consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from fees if they meet the technical design criteria of the exemption and are used primarily for educational training and academic research purposes." The Commission continues to believe this is

consistent with the intent of the Energy Policy Act of 1992, and therefore is exempting these Federally-owned reactors from part 170 fees.

Note the NRC is clarifying that the fee exemption in §170.11(a)(9) remains in effect even after the reactors meeting this criteria are no longer authorized to operate in the revision to that paragraph.

4. Charging Part 170 Fees for Tracking and Monitoring Shipments of Classified Matter.

The NRC is clarifying that full cost part 170 fees will be assessed to track and monitor shipments of classified materials (e.g., components of gas centrifuge uranium enrichment facilities). The NRC currently has under review applications to build and operate gas centrifuge uranium enrichment facilities. Because of the sensitive technology, many of the components associated with these facilities are classified as Restricted Data under the Atomic Energy Act of 1954 (Pub. L. 83-703), as amended. Furthermore, some of these components are voluminous and cannot be transported under the standard classified matter transportation requirements of §95.39(b) and (c) (e.g., double wrapping, marking, and tracking). In these cases, the NRC requires the licensee or applicant to submit a security plan under §95.39(e) for transporting this non-standard classified matter. One aspect of classified matter transportation security plans is continuous telemetric position monitoring and tracking of shipments of classified matter, including a capability for notification of local law enforcement officials and the NRC in the case of an emergency.

Because of the inherent national security concerns associated with the transportation of Restricted Data components and the current threat environment, the NRC has not considered permitting licensees to establish their own telemetric position monitoring and tracking capability for shipments of classified matter, nor to contract with a commercial service to meet this requirement. Instead, the NRC intends to require that these shipments be tracked and monitored by a U.S. government owned or operated system (e.g., systems operated by the U.S. Departments of Defense or Energy). As such, the NRC is establishing an interagency agreement and memorandum of understanding and reimbursable agreement with another government agency to provide the necessary tracking, monitoring, and communications center capabilities. Accordingly, the costs incurred by the NRC from this other government agency in monitoring these shipments will be passed on to the applicable licensee in full. While this is a new activity, the recovery of these costs through part 170 fees is consistent with the NRC's existing full cost recovery policy for licensing activities.

The NRC is making this clarification by modifying the definition of "special projects" in §170.3 to include this type of activity. This definition currently includes examples of special projects. Including this activity as an example would ensure that licensees are informed that these activities are subject to part 170 fees.

5. Revisions to Import/Export Fee Categories.

The NRC is modifying the import and export fee categories at §170.31 to reflect revisions to 10 CFR part 110 that were published on July 1, 2005 (70 FR 37985), effective December 28, 2005. These part 110 revisions take into account provisions in the International Atomic Energy Agency (IAEA) *Code of Conduct on the Safety and Security of Radioactive Sources* concerning

the import and export of radioactive sources, and the supplemental IAEA guidance on the *Import and Export of Radioactive Sources*.

The specific radioactive material and quantities newly covered by NRC regulations, per the July 1, 2005 revisions, are listed in Table 1 of Appendix P to part 110, and are essentially identical to the list of radioactive materials in Category 1 and Category 2 of the *Code of Conduct*. The amendments to part 110 require NRC authorization of certain exports and imports by specific license. As a result of these changes, it is necessary to add additional import/export fee categories under §170.31 to accommodate these new types of licensees.

Therefore, the NRC is modifying fee category 15 at §170.31 to include separate fee categories for Category 1 Exports (fee categories 15.F through 15.I), Category 2 Exports (fee categories 15.J through 15.L), Category 1 Imports (fee categories 15.M and 15.N), Category 2 Imports (fee category O), Category 1 Imports with Agent and Multiple Licensees (fee categories 15.P and 15.Q), and minor amendments to Category 1 and 2 Exports and Imports (fee category 15.R). As with other flat fees established under §170.31, the fees associated with each fee category reflect the NRC's estimate of average hours required to process the license application, multiplied by the hourly rate. These changes also establish that for a combined import and export license application for material listed in Appendix P to part 110, only the higher of the two applicable fee amounts must be paid. This is because the difference in level of effort associated with processing a combined import and export license versus processing just the export license (for the material listed in Appendix P to part 110, only) is negligible.

6. Administrative Amendments.

The NRC is eliminating the reference to “route approvals for shipment of radioactive materials” in the definition of “special projects” under §170.3. This activity is currently covered under §170.31, fee category 10 C., which establishes full cost recovery for this and other related activities; therefore, the additional reference to this activity as a special project (for which the NRC assesses full cost fees) is redundant.

The NRC is also modifying §170.11(a)(4) to clarify that the fee exemption does not apply if an institution meets at least one of the criteria listed in §170.11(a)(4)(i) - (iv). Currently, these criteria are connected with an “and,” rather than an “or,” making it unclear whether the fee exemption in §170.11(a)(4) applies to an institution that meets one of the criteria. This revised language is consistent with the language used for this same exemption as applied to part 171 fees under §171.11(a)(1) and will enhance the clarity of this provision.

Additionally, the NRC is clarifying which hourly rate is applicable to which activities. Currently, §170.20 states that the Reactor Program rate is applicable to §170.21 activities, and the Materials Program rate is applicable to §170.31 activities. The NRC is amending §170.20 to clarify that (1) the Reactor Program hourly rate is applicable to all activities for which fees are assessed under §170.21 of the fee regulations, with the exception of reactor decommissioning and import/export licensing activities, and (2) the Materials Program rate is applicable to all activities for which fees are assessed under §170.31 of the fee regulations, as well as the reactor decommissioning and import/export activities under §170.21. This change better aligns the applicable hourly rate with the data used to calculate that rate (i.e., reactor decommissioning resources are included in the Materials Program hourly rate).

Finally, the NRC is creating a new fee category under §170.31, which would effectively

split the current fee category 1.A.2.b (“other” fuel facilities) into two categories, one for gas centrifuge enrichment demonstration facilities and one for hot cell facilities. This change keeps the fee categories under parts 170 and 171 consistent, in light of the same change the NRC made to §171.16. This change does not affect part 170 fee recovery requirements, as each category is subject to full cost part 170 fees where applicable. This change results in different annual fees for the existing fee category 1.A.2.b and the new fee category 1.A.2.c, as explained in more detail under Section III.B.3.a of this document.

In summary, the NRC is making the following changes to 10 CFR part 170 --

1. Establishing revised Reactor and Materials Program hourly rates;
2. Revising the licensing fees to be assessed to reflect the Reactor and Materials Program hourly rates;
3. Amending §§170.11 and 170.31 to provide that part 170 fees will be assessed to Federal agencies where applicable (except for certain Federally-owned research reactors);
4. Revising §170.3 to clarify that full cost part 170 fees will be assessed to track and monitor shipments of classified matter;
5. Modifying the import and export fee categories under §170.31; and
6. Making minor administrative changes for purposes of clarification, consistency, and to eliminate redundancy.

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 making the following changes under part 171: proceeding with a presumption in favor of rebaselining annual fees beginning with the final FY 2006 rule; recovering generic transportation costs as part of other existing annual fees; revising the annual fees for FY 2006 to reflect the FY 2006 budget, changes in the number of NRC licensees, and the division of an existing fuel facilities fee category into two categories; eliminating the existing fee payment method exception for Class I and Class II uranium recovery licensees; and making an administrative change to clarify the definition of “overhead and general and administrative costs.” The amendments are described below.

1. Rebaselining Annual Fees.

The NRC uses one of two methods to determine the amounts of the annual fees established in its fee rule each year. One method is “rebaselining,” for which the NRC’s budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The second method is the “percent change” method, for which fees are revised based on the percent change in the total budget, taking into account other adjustments, such as the number of licensees and the projected revenue to be received from part 170 fees.

The NRC is establishing rebaselined annual fees for FY 2006, and is proceeding with a presumption in favor of rebaselining when determining annual fees for FY 2007 and beyond.

The Commission's previous policy regarding the method of calculating annual fees, made in the statement of consideration of the FY 1995 fee rule (60 FR 32218; June 20, 1995), and further explained in the statement of consideration of the FY 1999 fee rule (64 FR 31448; June 10, 1999), was that annual fees would be rebaselined at least every third year, and more frequently if there was a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The NRC is establishing a presumption in favor of rebaselining beginning with the FY 2006 rulemaking because (1) rebaselining is usually appropriate since there is often a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees, and (2) delaying rebaselining can result in larger fee changes in the years when fees are rebaselined. The use of the percent change method will remain an option should there be a year in which there are no significant changes to the total budget or individual programs for fee classes. The NRC expects that in most years, annual fees will be rebaselined.

Until FY 1996, annual fees were determined using the rebaselining method. In an effort to stabilize fees, the NRC decided to adjust annual fees using the percent change method beginning in FY 1996, unless there was a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. Fees were determined using the percent change method in the FYs 1996 - 1998 fee rules.

The NRC rebaselined fees in the FY 1999 fee rule, and solicited comment on the use and frequency of the percent change method. Some commenters, such as the Nuclear Energy Institute, supported rebaselining every year, believing that this method best supports the accurate alignment of costs to fee classes and the in-depth review needed to maximize agency efficiency. Other commenters appreciated the fee stability provided by the percent change

method. In response to these comments, the Commission determined that annual fees should be rebaselined every three years, or 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. Fees were calculated using the percent change method in FY 2000, and were rebaselined in FYs 2001 - 2005.

As mentioned previously, the NRC believes that it should proceed, in future rulemakings, with a presumption in favor of rebaselining because there is often a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. Changes occurring in FY 2006 and beyond that warrant a rebaselining of fees include those in the areas of new reactor licensing, homeland security (including the removal of certain homeland security costs from the fee base beginning in FY 2007, per the Energy Policy Act of 2005), and new regulatory authority for naturally occurring and accelerator produced radioactive material. Accordingly, the Commission has concluded that the percent change method should be used infrequently, and therefore, is proceeding with a presumption in favor of rebaselining each year beginning with this fee rule.

2. Recovering Generic Transportation Costs as Part of Other Existing Annual Fees.

The NRC is establishing that generic transportation costs unrelated to DOE be recovered as part of existing annual fees for license fee classes, rather than through a separate annual fee for part 71 Quality Assurance (QA) program approval holders (as is the current practice). Under this change, the annual fee for fee categories 10.B.1 and 10.B.2 under §171.16 will be eliminated. However, the NRC is not changing or eliminating the annual fee under §171.16, fee category 18.A, for DOE transportation activities, which will continue to be calculated using the

current methodology (described further under Section III.B.3.h of this document). This change will enhance the equity of NRC's fees, increase the consistency of 10 CFR parts 71 and 72 fee recovery, and decrease the administrative burden associated with a separate transportation annual fee.

All NRC licensees must perform some activities related to the transportation of radioactive material as a necessary part of their licensed activities. This transportation is authorized by their NRC license (under 10 CFR parts 30, 40, 50, 70, etc.). [10 CFR 71.17 establishes a general license that authorizes NRC licensees to make shipments using packages with an approved Certificate of Compliance (CoC), without further approval.] For example, all licensees receive licensed material at their site, and ship products and waste materials. Because the NRC does not issue separate licenses under part 71 for transportation activities, the NRC currently recovers the cost of all "generic" transportation activities (i.e., those activities that are not licensee-specific, and therefore not recovered through part 170 fees) through annual fees for QA program approvals. QA program approvals are required for entities holding NRC approved CoCs for transportation packages and for licensees that ship large (Type B) quantities of radioactive material or fissile material. NRC licensees must also use an approved CoC to transport radioactive material.

The NRC currently charges annual fees for the two types of QA program approvals it issues: (1) use (approximately 80 programs), and (2) use and fabrication (approximately 40 programs). However, the resources for generic transportation activities—which are recovered through these two annual fees—support many other transportation-related NRC approvals and services, including the issuance of CoCs, route approvals, and evaluations of transportation

devices and security plans. (The NRC charges part 170 fees for these specific services, not annual fees, for various reasons.)

One reason this approach raises fairness concerns is that a company is required to have only one QA program approval regardless of the number of CoCs it holds. This means companies pay the same annual fee regardless of whether they own one or many CoCs. As industry consolidation has increased over the past decade and the NRC has issued fewer QA program approvals, this equity concern has increased.

The NRC believes generic transportation resources would be recovered more equitably if these costs were included in the existing annual fees for NRC licenses for 10 CFR parts 30, 40, 50, 70, etc. The resources associated with generic transportation activities would be distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class. (This is a method similar to that used to calculate DOE's annual fee for transportation activities under §171.16 fee category 18.A.) In this way, the annual fee for a license would include the estimated share of transportation resources needed to support that license, similar to the recovery of other types of generic resources such as rulemakings and risk assessments. Note that the amount of generic transportation resources distributed to the fee classes does not include the cost of activities associated with fee-exempt entities (e.g., nonprofit educational institutions). Additionally, the distribution of these resources to the fee classes is adjusted to account for the licensees in each fee class that are fee exempt. [For example, if two CoCs benefit the entire test and research reactor class, but only four of 31 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals $((4/31)*2)$, or 0.26 CoCs.]

Under this new approach, reactors pay approximately 38 percent of these costs in FY 2006, materials users approximately 32 percent, fuel facilities approximately 21 percent, spent fuel/reactor decommissioning licensees approximately nine percent, and test and research reactors approximately 0.3 percent.

This new approach will also increase the consistency of parts 71 and 72 fee recovery. Part 72 QA programs are approved as part of the CoC approval process, and an annual fee is not assessed for either this QA approval or the CoC. The generic costs associated with spent fuel storage are recovered as part of the annual fee assessed to operating power reactors, decommissioning power reactors, and independent spent fuel storage installation licensees who do not hold a part 50 license.

Finally, an additional benefit of this approach is that it will decrease administrative burden and costs for both NRC and licensees by eliminating a required systems interface for NRC fee billing purposes, as well as reduce the number of NRC bills and accounts receivable transactions.

3. Revised Annual Fees.

The annual fees in §§171.15 and 171.16 are revised for FY 2006 to recover approximately 90 percent of the NRC's FY 2006 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and for WIR activities. The total amount to be recovered through annual fees for FY 2006 is \$441.7 million, compared to \$380.5 million for FY 2005.

Rebaselining fees in FY 2006 results in increased annual fees compared to FY 2005 for all licensees except certain fuel facilities. The increases in annual fees range from four percent for certain sealed source safety devices to approximately 118 percent for uranium recovery facilities. However, most of the annual fee increases are of similar magnitude to the percentage increase in total required fee recovery of approximately 15 percent. The annual fee for certain medical licensees (fee category 7C) and industrial users of nuclear material (fee category 3P), which are the two fee categories with the largest number of licensees (with a combined total of over 3,200 of the NRC's approximately 4,400 billable materials users licensees), increased by approximately 18 percent and 16 percent, respectively.

As mentioned previously, the most significant factor affecting the changes to the annual fee amounts is the increase in the NRC's fee recoverable budget in FY 2006. The NRC's fee recoverable budget, as mandated by law, is \$83.4 million larger in FY 2006 as compared to FY 2005, an increase of over 15 percent. Much of this increase is for the additional workload demand in areas such as new plant licensing and security. Other factors include adjustments in the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2006) and the estimated part 170 collections for the various classes of licenses. The percentage of the NRC's budget not subject to fee recovery remained unchanged at ten percent from FY 2005 to FY 2006.

Note that the NRC's total estimated part 170 fee collections increased by over 19 percent in FY 2006 (compared to FY 2005 actual part 170 collections). This increase is mainly due to the increase in the FY 2005 hourly rates as compared to the FY 2004 hourly rates. As discussed in the FY 2005 rulemaking, the higher hourly rates established in FY 2005 increased part 170 fee collections beginning in FY 2006. (These rates took effect near the end of FY

2005, and the NRC began collecting receipts from these higher rates as of the beginning of FY 2006.) Because costs not recovered under part 170 are recovered through part 171 annual fees, an increase in total part 170 fee collections results in a reduction in total annual fees by the same amount. Because of the higher hourly rates and resulting higher part 170 fee collections in FY 2006, the FY 2006 annual fees are lower than they would have been had NRC not established higher hourly rates in FY 2005.

As mentioned previously, the NRC has made four updates to the FY 2006 fee calculations since the proposed rule, and these adjustments affected the annual fee estimates in this rule. First, the NRC updated the part 170 estimates based on the latest invoice data available. (The part 170 estimates decreased somewhat for most fee classes, and remained the same for two.) Second, the NRC has updated its allocation of the 'Homeland Security Unallocated' planned activity, as described in Section II.D.1. Third, the NRC has adjusted downward the amount of generic transportation resources to be recovered from annual fees to take into account the annual fee collections received for transportation activities (fee categories 10.B.1 and 10.B.2 under §171.16) until the effective date of the FY 2006 final fee rule. (Note that this is only a one-time adjustment because the 10.B.1 and 10.B.2 annual fees have been eliminated as of the effective date of this rule; therefore, licensees should expect the value of these allocated transportation resources to increase in future years.) Fourth, the number of NRC materials users licensees has been updated to reflect the transfer of approximately 150 licensees to the State of Minnesota. The net impact of these updates is that annual fees for most licensees either decreased slightly or remained the same since the proposed rule, but some did increase by a small amount. Each of these changes and their associated impacts on each fee class is discussed in more detail in Section III.B.3.a-h.

Table III shows the rebaselined annual fees for FY 2006 for a representative list of categories of licenses. The FY 2005 fee is also shown for comparative purposes.

TABLE III. - REBASELINED ANNUAL FEES FOR FY 2006

<u>Class/category of licenses</u>	<u>FY 2005</u>	<u>FY 2006</u>
	<u>Annual Fee</u>	<u>Annual Fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,155,000	\$3,704,000
Spent Fuel Storage/Reactor Decommissioning	159,000	173,000
Test and Research Reactors (Non-power Reactors)	59,500	80,100
High Enriched Uranium Fuel Facility	5,449,000	5,420,000
Low Enriched Uranium Fuel Facility	1,632,000	1,596,000
UF ₆ Conversion Facility	699,000	1,046,000
Conventional Mills	30,200	65,900
Typical Materials Users:		
Radiographers	12,800	15,400
Well Loggers	4,100	4,800
Gauge Users (Category 3P)	2,500	2,900
Broad Scope Medical	27,300	33,000

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 2006 EWDA, which amended OBRA-90 (as amended) to require that the

NRC recover 90 percent of its budget in FY 2006, the total surcharge costs for FY 2006 will be reduced by approximately \$69.3 million. The total FY 2006 budgeted costs for these activities and the reduction in the total surcharge amount for fee recovery purposes are shown in Table IV (individual values may not sum to totals due to rounding).

TABLE IV. - SURCHARGE COSTS

[Dollars in millions]

<u>Category of costs</u>	<u>FY 2006 budgeted costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$13.8
b. Agreement State oversight	\$8.0
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)	\$5.4
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	\$11.9

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)	\$5.7
3.	Activities supporting NRC operating licensees	
	and others:	
a.	Regulatory support to Agreement States ¹	\$20.2
b.	Generic decommissioning/reclamation (except	
	those related to power reactors)	\$6.5
	Total surcharge costs	\$72.8
	Less 10 percent of NRC's FY 2006 total budget (less NWF and WIR)	<u>-69.3</u>
	Total Net Surcharge Costs to be Recovered	\$3.5

As shown in Table IV, \$3.5 million is the total net surcharge cost allocated to the various classes of licenses for FY 2006 (i.e., that portion of the total surcharge not covered by the NRC's 10 percent fee relief). The NRC has continued 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 is included in the annual fee assessed to each licensee. The FY 2006 surcharge costs (and the percent of total surcharge costs) allocated to each class of licenses, are shown in Table V (individual amounts may not sum to totals due to rounding). Separately, the NRC has continued to allocate the low-level waste

¹This estimate includes the costs of homeland security activities associated with sources in Agreement States, even though regulatory authority remains with the NRC for these activities. However, fees are not assessed to sources in Agreement States for these activities, therefore these costs are included in this surcharge category. Additionally, this estimate includes some costs associated with establishing a regulatory infrastructure for naturally occurring and accelerator produced radioactive material because this infrastructure will further the future regulation of these sources by both NRC and Agreement States.

(LLW) surcharge costs based on the volume of LLW disposal of certain classes of licenses. For FY 2006, the LLW surcharge costs are \$3.5 million.

TABLE V. - ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	<u>Percent</u>	<u>\$M</u>	<u>Percent</u>	<u>\$M</u>	<u>\$M</u>
Operating Power Reactors	74	2.6	83.7	2.9	5.5
Spent Fuel Storage/ Reactor Decomm.	---	---	4.3	0.2	0.2
Test and Research Reactors	---	---	0.1	0	0
Fuel Facilities	8	0.3	6.5	0.2	0.5
Materials Users	18	0.6	4.1	0.1	0.8
Transportation	---	---	0.7	0	0
Rare Earth Facilities	---	---	0.1	0	0
Uranium Recovery	<u>---</u>	<u>---</u>	<u>0.4</u>	<u>0</u>	<u>0</u>
Total Surcharge	100	3.5	100.0	3.5	7.0

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. below. The work papers which support this rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2006 budgeted FTE and contract dollars allocated to each fee class and surcharge

category at the planned activity and program level, and compare these allocations to those used to develop final FY 2005 fees. The work papers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address <http://www.nrc.gov/reading-room/adams.html>. For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

Note that all budgeted resources and annual fee amounts presented in this document reflect an increase in the full cost of an FTE. This increase occurred due to the Government-wide pay raise and the more accurate allocation of overhead to the FTEs supporting fee classes versus surcharge categories, which increased the full cost of FTEs supporting fee classes. As a percent of total fee-based budgeted resources, the resources associated with NRC's overhead actually declined from FY 2005 to FY 2006.

a. Fuel Facilities.

The FY 2006 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses is approximately \$24.8 million. This value is derived based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170 collections and adjusted to reflect the net allocated surcharge, allocated generic transportation resources, and billing adjustments. The summary calculations used to derive this value are presented in Table VI for FY 2006, with FY 2005 values shown for comparison purposes (individual values may not sum to totals due to rounding):

TABLE VI. - ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

<u>Summary Fee Calculations</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Fuel Facility Fee Class</u>		
Total budgeted resources	\$38.2	\$39.6
Less estimated part 170 receipts	- <u>\$14.3</u>	- <u>\$15.8</u>
Net part 171 resources	\$24.0	\$23.8
Plus allocated generic transportation	+ N/A	+ \$0.4
Plus allocated surcharge	+ \$0.4	+ \$0.5
Billing adjustments (including carryover and budget rescission)	- <u>\$0.2</u>	+ <u>\$0.0</u>
Total required annual fee recovery	\$24.1	\$24.8

The small increase in fuel facilities FY 2006 total budgeted resources compared to FY 2005 is due mostly to an increase in the full cost of an FTE (as explained previously). The total required annual fee recovery also increases as a result of the allocation of generic transportation resources.

The total required annual fee recovery amount is 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 work papers 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.

Once the structure of the matrix is established, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety

and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste related activities (see the work papers for the complete list). Effort factors are assigned as follows: zero (no regulatory effort), one (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The budgeted resources for safety activities are then allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is ten, that fee category will be allocated ten percent of the total budgeted resources for safety activities. Similarly, the budgeted resources for safeguards activities are allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The surcharge that must be recovered from fuel facilities is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number licensees in that fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total for each fee category (not per facility). Note this table includes the addition of a new fee category, as discussed immediately following the table.

TABLE VII. - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility type (fee category)</u>	Number of <u>facilities</u>	<u>Effort factors (percent of total)</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel	2	101 (38.0)	96 (52.2)
Enrichment	2	70 (26.3)	40 (21.7)
Low Enriched Uranium Fuel	3	66 (24.8)	21 (11.4)
UF ₆ Conversion	1	12 (4.5)	7 (3.8)
Limited Operations	1	8 (3.0)	3 (1.6)
Gas Centrifuge Enrichment			
Demonstration	1	3 (1.1)	15 (8.2)
Hot Cell	1	6 (2.3)	2 (1.1)

The NRC is dividing fee category 1.A.2.b under §170.31 into two categories, and is using the existing fee methodology to establish separate annual fees for these two categories. Currently, fee category 1.A.2.b captures all fuel facility licensees that do not fall into other fee categories. There are currently two licensees in this fee category; one is a gas centrifuge enrichment demonstration facility, and one is a hot cell facility. The NRC provides significantly different levels of regulatory support for these facilities. For example, the gas centrifuge enrichment demonstration facility generates and requires the safe management of significantly greater amounts of sensitive information. For this reason, the NRC is dividing this fee category into two categories to separately establish annual fees for these two types of facilities based on the NRC's resources (i.e., level of effort) specifically associated with regulating each type of facility. This change better aligns the NRC's budgeted resources with the fees assessed to these two facilities.

Applying the FY 2006 effort factors (as summarized in Table VII) to the safety, safeguards, and surcharge components of the \$24.8 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 VIII. Note that the annual fees for the gas centrifuge enrichment demonstration and UF₆ conversion facilities are higher than the FY 2005 annual fees because the safeguards effort factors for these facilities have been raised. These revised factors better reflect the effort levels associated with safeguards activities for these facilities, including those associated with interim compensatory measures and the handling of sensitive information.

TABLE VIII. - ANNUAL FEES FOR FUEL FACILITIES

<u>Facility type (fee category)</u>	<u>FY 2006 annual fee</u>
High Enriched Uranium Fuel	\$5,420,000
Uranium Enrichment	\$3,027,000
Low Enriched Uranium	\$1,596,000
UF ₆ Conversion	\$1,046,000
Gas Centrifuge Enrichment Demonstration	\$991,000
Limited Operations Facility	\$605,000
Hot Cell	\$440,000

Note the fuel facility annual fees decreased slightly between the FY 2006 proposed and final fee rules due to (1) the revised allocation of the 'Homeland Security Unallocated' planned activity, which resulted in fewer budgeted resources allocated to this fee class (discussed further in Section II.D.1), and (2) a reduction of allocated resources for generic transportation activities (discussed further in Section III.B.3.h).

As mentioned previously, the NRC is currently reviewing applications to build and operate gas centrifuge uranium enrichment facilities. If these facilities are licensed to operate, they will be subject to an annual fee in accordance with the methodology described previously. The NRC's current plans are to establish a separate fee category for these facilities.

b. Uranium Recovery Facilities.

The total FY 2006 budgeted cost to be recovered through annual fees assessed to the uranium recovery class is approximately \$1.1 million. The derivation of this value is shown below, with FY 2005 values shown for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE IX. - ANNUAL FEE SUMMARY CALCULATIONS FOR
URANIUM RECOVERY FACILITIES

[Dollars in millions]

<u>Summary Fee Calculations</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Uranium Recovery Fee Class</u>		
Total budgeted resources	\$2.01	\$2.34
Less estimated part 170 receipts	- <u>\$1.30</u>	- <u>\$1.29</u>
Net part 171 resources	\$0.71	\$1.05
Plus allocated generic transportation	+ N/A	+ N/A
Plus allocated surcharge	+ \$0.01	+ \$0.01

Billing adjustments (including carryover and budget rescission)	-	<u>\$0.01</u>	+	<u>\$0.00</u>
Total required annual fee recovery		\$0.70		\$1.06

The increase in budgeted resources reflects the reallocation of existing NRC FTE to uranium recovery licensing and inspection activities from other activities (e.g., Agreement State oversight). The part 170 estimate (as shown above) reflects an increase, over historical actual part 170 collections, to fully account for these additional activities. The FY 2006 part 170 estimate is not much different than the FY 2005 part 170 estimate because the FY 2005 estimate was higher than the actual part 170 collections.

Of the required annual fee collections, approximately \$732,000 would be assessed to DOE. The remaining \$329,000 would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites).

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 results in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge 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 in Table X.

TABLE X. - COSTS RECOVERED THROUGH ANNUAL FEES;
URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount [Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I and Title II general licenses]:

UMTRCA Title I budgeted costs	\$ 402,913
50 percent of generic/other uranium recovery budgeted costs	322,722
50 percent of uranium recovery surcharge	<u>6,536</u>
Total Annual Fee Amount for DOE (rounded)	732,000

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50 percent of generic/other uranium recovery budgeted costs	322,722
50 percent of uranium recovery surcharge	<u>6,536</u>
Total Annual Fee Amount for Title II Specific Licenses	329,258

The matrix used to allocate the costs of various categories of Title II specific licensees has been reviewed and continues to equally weight, as in FY 2005, the effort levels for each category of uranium recovery facilities, in accordance with the NRC’s FY 2006 budgeted activities. As such, each non-DOE uranium recovery licensee will be assessed an equal share of the total annual fee amount for UMTRCA Title II specific licenses. Additionally, the NRC is maintaining the existing approach for establishing part 171 annual fees for Title II uranium recovery licensees [established in the FY 1995 fee rule (60 FR 32218; June 20, 1995)]. This approach 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 category 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 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 XI. - WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

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

Applying these factors to the approximately \$329,000 in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees for FY 2006:

TABLE XII. - ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

<u>Facility type</u>	<u>FY 2006 annual fee</u>
Class I (conventional mills)	\$65,900
Class II (solution mining)	65,900
11e.(2) disposal	N/A
11e.(2) disposal incidental to existing tailings sites	65,900

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.

The uranium recovery annual fees decreased slightly between the FY 2006 proposed and final fee rules due to the revised allocation of the 'Homeland Security Unallocated' planned activity, which resulted in fewer budgeted resources allocated to this fee class (discussed further in Section II.D.1).

As discussed in Section III.B.4, "Eliminating the Existing Fee Payment Exception for Uranium Recovery Licensees," the NRC is establishing that all Title II facilities be subject to the billing provisions of §171.19(c), which state that annual fees that are less than \$100,000 are billed on the anniversary date of the license.

c. Operating Power Reactors.

The approximately \$367.2 million in budgeted costs to be recovered through FY 2006 annual fees assessed to the power reactor class was calculated as shown in Table XIII. (FY 2005 values shown for comparison purposes; individual amounts may not sum to totals due to rounding.)

TABLE XIII. - ANNUAL FEE SUMMARY CALCULATIONS FOR
OPERATING POWER REACTORS

[Dollars in millions]

<u>Summary Fee Calculations</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Operating Power Reactors Fee Class</u>		
Total budgeted resources	\$440.7	\$515.9
Less estimated part 170 receipts	- <u>\$130.5</u>	- <u>\$155.2</u>
Net part 171 resources	\$310.2	\$360.7
Plus allocated transportation	+ N/A	+ \$0.8
Plus allocated surcharge	+ \$4.0	+ \$5.5
Billing adjustments (including carryover, any budget rescission)	- <u>\$2.6</u>	+ <u>\$0.2</u>
Total required annual fee recovery	\$311.6	\$367.2

The budgeted costs to be recovered through annual fees to power reactors, including those for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2006 annual fee of \$3,531,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2006 spent fuel storage/reactor decommissioning annual fee of \$173,000. This results in a total FY 2006 annual fee of \$3,704,000 for each power reactor licensed to operate.

The annual fee for power reactors increases in FY 2006 compared to FY 2005 due to an increase in budgeted resources for a number of activities, including regulatory infrastructure for new reactor licensing activities, preparations for future combined license applications, homeland security-related mitigating strategies, licensing tasks related to the aging of reactor systems and components, and evaluating and resolving operational issues. As shown previously, the NRC estimates an increase in part 170 collections of about 19 percent from operating power reactors; these collections offset the required annual fee recovery amount by a total of over \$155 million.

The power reactor annual fee increased by about one percent between the FY 2006 proposed and final rules because of (1) a decrease in the estimated part 170 collections from this fee class, based on the latest four quarters of invoices available, and (2) the revised allocation of the 'Homeland Security Unallocated' planned activity, which resulted in more budgeted resources allocated to this fee class (discussed further in Section II.D.1).

d. Spent Fuel Storage/Reactor Decommissioning.

For FY 2006, budgeted costs of approximately \$21.2 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. Table XIV below shows the calculation of this annual fee amount. (FY 2005 values shown for comparison purposes; individual values may not sum to totals due to rounding.)

TABLE XIV. - ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

<u>Summary Fee Calculations</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Spent Fuel Storage/Reactor Decommissioning Fee Class</u>		
Total budgeted resources	\$25.1	\$26.6
Less estimated part 170 receipts	- \$5.7	- \$5.8
Net part 171 resources	\$19.4	\$20.8

Plus allocated generic transportation	+	N/A	+	\$0.2
Plus allocated surcharge	+	\$0.1	+	\$0.2
Billing adjustments (including carryover and budget rescission)	-	<u>\$0.1</u>	+	<u>\$0.0</u>
Total required annual fee recovery		\$19.4		\$21.2

The required annual fee recovery amount is divided equally among the 122 licensees, resulting in a FY 2006 annual fee of \$173,000 per licensee. The value of total budgeted resources for this fee class increased in FY 2006 compared to FY 2005 due to an increase in the full cost of a budgeted FTE, the allocation of generic transportation resources, and relatively small increases in contracts allocated for activities such as licensing/certification and training.

The annual fee for this fee class increased slightly between the FY 2006 proposed and final fee rules because of a reduced estimate of part 170 fee collections, based on the latest four quarters of invoices.

e. Test and Research Reactors (Nonpower Reactors).

Approximately \$320,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2006. Table XV summarizes the annual fee calculation for test and research reactors for FY 2006 (as compared to FY 2005). Individual values may not sum to totals due to rounding.

TABLE XV. - ANNUAL FEE SUMMARY CALCULATIONS FOR
TEST AND RESEARCH REACTORS

[Dollars in millions]

<u>Summary Fee Calculations/</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Test and Research Reactors Fee Class</u>		
Total budgeted resources	\$0.52	\$0.88
Less estimated part 170 receipts	- <u>\$0.28</u>	- <u>\$0.57</u>
Net part 171 resources	\$0.24	\$0.31
Plus allocated generic transportation	+ N/A	+ \$0.01
Plus allocated surcharge	+ \$0.00	+ \$0.01
Billing adjustments (including carryover and budget rescission)	- <u>\$0.00</u>	+ <u>\$0.00</u>
Total required annual fee recovery	\$0.24	\$0.32

This required annual fee recovery amount is divided equally among the four test and research reactors subject to annual fees, and results in a FY 2006 annual fee of \$80,100 for each licensee. This increase in annual fees from FY 2005 to FY 2006 is due to a relatively large increase in budgeted resources for licensing activities for test and research reactors, which is part of an initiative to reduce a backlog of reactor licensing actions. Although the NRC estimates that much of this increase will result in an increase in estimated part 170 collections (which is factored into the part 170 estimates above), some of these resources are projected to be associated with non-licensee specific activities, and therefore will need to be recovered under part 171.

Note the annual fee for test and research reactors increased by about five percent between the FY 2006 proposed and final fee rules. This is due to a lower estimate of part 170 fee collections, based on the latest four quarters of invoices.

f. Rare Earth Facilities.

The FY 2006 budgeted costs of \$95,900 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 2006 annual fee of \$95,900. Table XVI summarizes the annual fee calculation for the rare earth fee class for FY 2006 (as compared to FY 2005). (Individual values may not sum to totals due to rounding.)

TABLE XVI. - ANNUAL FEE SUMMARY CALCULATIONS FOR
RARE EARTH FACILITIES
[Dollars in millions]

<u>Summary Fee Calculations</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Rare Earth Fee Class</u>		
Total budgeted resources	\$0.875	\$0.831
Less estimated part 170 receipts	- <u>\$0.800</u>	- <u>\$0.740</u>
Net part 171 resources	\$0.075	\$0.091
Plus allocated generic transportation	+ N/A	+ N/A
Plus allocated surcharge	+ \$0.000	+ \$0.005
Billing adjustments (including carryover and budget rescission)	- <u>\$0.000</u>	+ <u>\$0.000</u>
Total required annual fee recovery	\$0.074	\$0.096

The total allocated resources for this fee class decreased slightly in FY 2006 compared to FY 2005, but the annual fee increases due to lower estimated part 170 collections. Note the rare earth annual fee decreased slightly between the FY 2006 proposed and final fee rules

because of the revised allocation of the 'Homeland Security Unallocated' planned activity, which resulted in fewer budgeted resources allocated to this fee class (discussed further in Section II.D.1).

g. Materials Users.

Table XVII shows the calculation of the FY 2006 annual fee amount for materials users licensees. (FY 2005 values shown for comparison purposes; individual values may not sum to totals due to rounding.)

TABLE XVII. - ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

<u>Summary Fee Calculations/Materials Users</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Fee Class</u>		
Total budgeted resources	\$27.5	\$30.3
Less estimated part 170 receipts	- \$1.9	- \$2.0
Net part 171 resources	\$25.6	\$28.2
Plus allocated generic transportation	+ N/A	+ \$0.6
Plus allocated surcharge	+ \$0.6	+ \$0.8
Billing adjustments (including carryover and budget rescission)	- \$0.1	+ \$0.0
Total required annual fee recovery	\$26.0	\$29.6

To equitably and fairly allocate the \$29.6 million in FY 2006 budgeted costs to be recovered in annual fees assessed to the approximately 4,400 billable diverse materials users

licensees, 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. 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 materials users licenses is developed as follows:

Annual fee = Constant x [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier x (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately \$21.5 million in general costs (including allocated generic transportation costs) and is 1.21 for FY 2006. The inspection multiplier is the multiple necessary to recover approximately \$7.2 million in inspection costs, and is 1.57 for FY 2006. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2006, approximately \$111,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the \$143,000 in surcharge costs allocated to the materials users class of licenses and, for certain categories of

these licenses, a share of the approximately \$634,000 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in §171.16(d).

The annual fees for materials licensees increased in FY 2006 mainly because of an increase in budgeted resources for activities relating to information technology/tracking systems for these types of licensees (including tracking that relates to homeland security purposes), increases for inspection activities, and the allocation of generic transportation resources. Increases in annual fees for materials users licensees (other than master materials licenses, for which the annual fee increased 49 percent) range from approximately four percent to approximately 23 percent. These changes reflect the overall increase of over 14 percent in budgeted resources to be recovered through annual fees to this fee class; the actual percentage increase for different fee categories varies mainly because of the difference in how inspection versus other types of resources are distributed to the fee categories. For example, the inspection resources to be recovered through annual fees increased more than non-inspection resources from FY 2005 to FY 2006. Those fee categories that receive a relatively larger share of these inspection budgeted costs (due to their higher average hours per inspection), have annual fees that increase somewhat more than other fee categories, as compared to FY 2005. This is also a key reason for the master materials license fee increase.

Between the FY 2006 proposed and final fee rules, annual fees increased slightly for some materials users licensees, decreased slightly for others, and remained the same for the majority. The reasons for changes in the materials users fees are (1) a slight reduction in the estimated part 170 collections for this fee class, which increased the annual fee recovery amount; (2) a small decrease in allocated resources from the 'Homeland Security Unallocated' planned activity (discussed in Section II.D.1); (3) a decrease in allocated generic transportation

resources (discussed in more detail in Section III.B.3.h); and (4) the transfer of approximately 150 licensees to the State of Minnesota (see Section III.B.3.5).

The impact of the transfer of licensees to the State of Minnesota is that the budgeted resources for most licensing and inspection activities for the materials users fee class are allocated to fewer licensees. The FY 2006 final fee rule calculations reflect the allocation of a larger percentage of materials users regulatory infrastructure resources to the surcharge category of Agreement State Regulatory Support because these infrastructure resources are allocated to the surcharge based on the percentage of total materials users licensees in Agreement States (and this percentage increased from 79 to 80 percent between the FY 2006 proposed and final fee rules). However, budgeted resources for activities such as licensing and inspections for NRC materials users licensees are not allocated to the surcharge because they do not benefit Agreement States or their licensees. Therefore, the transfer of licensees to the State of Minnesota between the FY 2006 proposed and final fee rules increased the amount of licensing and inspection resources to be recovered per NRC licensee. The impact of this action was somewhat offset by the changes listed in (2) and (3) in the preceding paragraph; the result is that there are no significant changes in materials users fees in between the FY 2006 proposed and final fee rules.

h. Transportation.

Table XVIII shows the calculation of the FY 2006 generic transportation budgeted resources to be recovered through annual fees. (FY 2005 values shown for comparison purposes.)

TABLE XVIII. - ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

<u>Summary Fee Calculations/Transportation</u>	<u>FY 2005 Final</u>	<u>FY 2006 Final</u>
<u>Fee Class</u>		
Total budgeted resources	\$5.4	\$6.3
Less estimated part 170 receipts	- \$1.1	- \$1.2
Net part 171 resources (required annual fee recovery)	\$4.3	\$5.1

As discussed previously, the NRC is recovering generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. Under this approach, the annual fee for fee categories 10.B.1 and 10.B.2 under §171.16 are eliminated, but the NRC will continue to assess a separate annual fee under §171.16, fee category 18.A, for DOE transportation activities.

The total FY 2006 budgeted resources for generic transportation activities, including those to support DOE CoCs, is \$5.1 million. [Generic transportation resources associated with fee-exempt entities are not included in this total; these costs are included in the appropriate surcharge category (e.g., the surcharge category for nonprofit educational institutions).] These resources are distributed to DOE (to be included in its annual fee under fee category 18.A of §171.16) and each license fee class based on the CoCs used by DOE and each fee class, as a proxy for the generic resources expended for each fee class. (Note that the number of CoCs used by fee class is adjusted to take into account the percentage of licensees in that fee class subject to annual fees, as explained previously.) As such, the amount of the generic resources

allocated is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

For the FY 2006 final fee rule, the amount of generic transportation resources allocated to the fee classes was reduced by the amount of estimated annual fee collections for QA program approvals in FY 2006 (approximately \$1.9 million). This is because of the timing of the issuance and effective date of the FY 2006 fee rule: The NRC is receiving payments for annual fees for transportation activities (fee categories 10.B.1 and 10.B.2 under §171.16 for QA program approval activities) until the effective date of this fee rule. As such, these collections have been applied to the NRC's fee recovery of FY 2006 generic transportation resources. This is only a one-time adjustment because the 10.B.1 and 10.B.2 annual fees have been eliminated as of the effective date of this rule. Therefore, licensees should expect the value of these allocated transportation resources to increase in future years. Note that the NRC has applied the \$1.9 million in FY 2006 QA program approval fee collections to the generic transportation resources to be recovered from the fee classes, only, and not to DOE's required annual fee recovery. This is because DOE is not subject to the QA program approval requirements as are commercial licensees. Accordingly, DOE did not pay these QA program approval fees nor benefit from these approvals.

The distribution of these resources to the license fee classes and DOE is as follows (individual values may not sum to totals due to rounding):

TABLE XIX. - DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2006

[Dollars in millions]

<u>License Fee Class/DOE</u>	<u>No. CoCs</u>	<u>Percentage of</u>	<u>Allocated Generic</u>
	<u>Benefitting Fee</u>	<u>Total CoCs</u>	<u>Transportation</u>
	<u>Class (or DOE)</u>	<u>(percent)</u>	<u>Resources</u>
TOTAL	134	100	\$5.13
DOE	33	24.6	<u>\$1.26</u>
Remainder to be Recovered			\$3.87
Less Estimated FY 2006 QA			<u>\$1.90</u>
program approval fee collections			
Net Amount to be Recovered from			\$1.97
Fee Classes			
<u>Fee Classes</u>			
TOTAL (w/o DOE)	101	100	\$1.97
Operating Power Reactors	39	38.4	\$0.76
Spent Fuel Storage/Reactor	9	8.9	\$0.17
Decommissioning			
Test and Research Reactors	0.3	0.3	\$0.01
Fuel Facilities	21	20.7	\$0.41
Materials Users	32	31.7	\$0.63

The NRC is continuing to assess DOE an annual fee based on the part 71 CoCs it holds. The NRC is not allocating these DOE-related resources to other licensees' annual fees because these resources specifically support DOE; hence the current fee recovery methodology for these resources remains efficient and equitable. Note that DOE's annual fee includes a portion of the surcharge, resulting in a total annual fee of \$1,285,000 for FY 2006. This fee increases from last year due to budgeted increases for licensing/certification activities and an increase in the full cost of an FTE. The fee decreased slightly between the FY 2006 proposed and final fee rules

because of a small decrease in allocated resources from the 'Homeland Security Unallocated' planned activity (discussed in Section II.D.1).

4. Eliminating the Existing Fee Payment Exception for Uranium Recovery Licensees.

Under the payment provisions of §171.19, the NRC currently bills licensees' part 171 fees annually if their annual fees are less than \$100,000, and quarterly if their annual fees are \$100,000 or more. However, the NRC bills Class I and Class II uranium recovery licensees quarterly in accordance with §171.19(b), regardless of the amount of their annual fee. The NRC established this payment exception for Class I and Class II uranium recovery licensees in the FY 2001 final rule (66 FR 32452; June 14, 2001) because the annual fees for these licensees had been fluctuating just above or below \$100,000. Since then, uranium recovery license fees have been well below \$100,000. Because the basis of this billing exception is now not a factor, and this exception is administratively burdensome to implement with the current fee billing system, the NRC is eliminating the billing exception for Class I and Class II uranium recovery licensees. These licensees are now subject to the same payment provisions as all other licensees, as described previously.

5. Agreement State Activities.

By letter dated July 6, 2004, Governor Tim Pawlenty of Minnesota requested that the NRC enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended. The Commission approved this Agreement on January 26, 2006, and the

Agreement took effect March 31, 2006. This resulted in the transfer of approximately 150 licenses to the State of Minnesota from the NRC.

Note that the continuing costs of Agreement State regulatory support and oversight for the State of Minnesota, as for any other Agreement State, are recovered through the surcharge (as reduced by the ten percent of its budget that the NRC receives in appropriations each year for these types of activities), consistent with existing policy. As discussed in Sections II.C.1 and III.B.g, the budgeted resources for the regulatory infrastructure to support these types of licensees are prorated to the surcharge based on the percent of total licensees in Agreement States. Accordingly, as a result of the State of Minnesota becoming an Agreement State, the NRC has increased the percentage of materials users regulatory infrastructure costs that are recovered through the surcharge. Specifically, this percentage increased from 79 to 80 between the FY 2006 and proposed and final fee rules. However, some resources associated with the materials users fee class are not prorated to the surcharge (e.g., resources for licensing and inspection activities), because these resources are for the purpose of supporting NRC licensees, only. As such, the transfer of licensees to the State of Minnesota resulted in an increase in annual fees for some materials users licensees because the budgeted resources for activities such as licensing and inspection are now spread to fewer NRC licensees.

6. Administrative Amendments.

The NRC is clarifying the definition of “overhead and general and administrative costs” under §171.5. This definition provides examples of organizations that are included as “indirect costs.” The NRC is clarifying that certain costs of some of these organizations are not

considered to be indirect; therefore, in these instances, these costs are not included in overhead and general and administrative costs. For example, the Atomic Safety and Licensing Board Panel (ASLBP) is listed as an indirect office in this definition. There are instances in which the ASLBP performs direct mission-related work, and the budgeted resources for these activities are considered to be direct in the fee calculations (consistent with the categorization of these resources in the NRC's budget). The NRC believes this clarification better reflects the most recent data on the types of budgeted resources associated with these offices. Additionally, this definition is revised to eliminate reference to an organization within the agency that no longer exists.

In summary, the NRC is --

1. Proceeding with the presumption in favor of rebaselining beginning with the FY 2006 fee rule;
2. Recovering generic transportation costs as part of other existing annual fees;
3. Revising the annual fees to reflect the FY 2006 budget and other changes;
4. Eliminating the existing fee payment exception for Class I and Class II uranium recovery licensees;
5. Revising the number of NRC licensees given that the State of Minnesota became an Agreement State; and,

6. Making an administrative change to clarify the definition of “overhead and general and administrative costs.”

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 2006 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 of 1954 and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act;

(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 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. As mentioned previously, the FY 2001 EWDAA 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 was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement through FY 2006. As a result, the NRC is required to recover approximately 90 percent of its FY 2006 budget authority, less the amounts appropriated from the NWF and for WIR activities, through fees. To comply with this statutory requirement and in accordance with §171.13, the NRC is publishing the amount of the FY 2006 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices, 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 2006 budget of \$741.5 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program and for WIR activities, and less the amount of funds collected from part 170 fees;

(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 2006 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 2006. This 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 Congressional Review 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 2006.

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.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

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

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

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

1. The authority citation for part 170 is revised 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), sec. 623, Pub. L. 109-58, 119 Stat. 783, (42 U.S.C. 2201(w)).

2. In §170.3, the definition of *special projects* is revised to read as follows:

§170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing

actions directly related to Presidentially-directed national security programs, topical report reviews, early site reviews, waste solidification facilities, activities related to the tracking and monitoring of shipment of classified matter, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. *Special projects* does not include those contested hearings for which a fee exemption is granted in §170.11(a)(2), including those related to individual plant security modifications.

* * * * *

3. In §170.11, paragraph (a)(5) is removed and reserved, and paragraph (a)(4)(iii) and the introductory text of paragraph (a)(9), paragraph (a)(9)(i) and the introductory text of paragraph (a)(9)(ii) are revised as follows:

§170.11 Exemptions.

(a) * * *

(4) * * *

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material or special nuclear material; or

* * * * *

(9) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term *research reactor* means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134 (c)) at a thermal power level of 10 megawatts or less; and

(ii) If so licensed at a thermal power level of more than 1 megawatt, does not contain--

* * * * *

4. Section 170.20 is revised to read as follows:

§170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§170.21 Activities, excluding reactor decommissioning and import/export licensing activities): \$217 per hour

(b) Nuclear Materials and Nuclear Waste Program (§170.31 Activities, as well as the reactor decommissioning and import/export licensing activities covered under §170.21): \$214 per hour

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

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

* * * * *

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees

Fees^{1,2}

* * * * *

K. Import and export licenses:

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

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

Application – new license, or amendment \$13,900.

2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)-(8).

Application – new license, or amendment \$8,100.

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

Application – new license, or amendment \$2,600.

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 \$1,700.

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.

Minor amendment \$320.

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.

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20,

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

* * * * *

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. For those fee categories identified to be subject to full cost fees, full cost fees will be assessed for all licensing and inspection activities, unless otherwise indicated.

SCHEDULE OF MATERIALS FEES

(See footnotes at end of table)

Category of materials licenses and type of fees¹

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) Gas centrifuge enrichment demonstration facilities Full Cost.
- (c) Hot cell facilities 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) 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 \$990.

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 \$2,000.

E. Licenses or certificates for construction and operation of a uranium enrichment facility 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 facilities⁴ Full Cost.

(b) Class II facilities⁴ Full Cost.

(c) Other facilities⁴ 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 \$240.

C. All other source material licenses:

Application \$8,400.

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 \$10,000.

- 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 \$3,800.

- 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 \$5,100.

- 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 \$3,600.

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application \$2,500.

- 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 \$5,000.

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.

Application \$12,000.

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 \$14,600.

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 \$8,700.

- 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 \$1,500.

- 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 \$880.

- 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 \$8,400.

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 \$3,400.

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 \$3,800.

O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:

Application \$3,500.

P. All other specific byproduct material licenses, except those in
Categories 4A through 9D:

Application \$1,200.

Q. Registration of a device(s) generally licensed under
part 31 of this chapter:

Registration \$730.

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 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 \$2,600.

- 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 \$3,900.

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 \$1,400.

- 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 \$17,100.

7. Medical licenses:

- A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$9,400.

- B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$6,700.

- C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source

material, or special nuclear material in sealed sources contained in teletherapy devices:

Application \$2,300.

8. Civil defense:

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

Application \$490.

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 \$21,000.

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 \$21,000.

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

Application – each source \$2,400.

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 \$810.

10. Transportation of radioactive material:

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

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

2. Other Casks Full Cost.

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

1. Users and Fabricators

Application \$5,600.

Inspections Full Cost.

2. Users

Application \$5,600.

Inspections Full Cost.

C. Evaluation of security plans, route approvals,

route surveys, and transportation security devices

(including immobilization devices) Full Cost.

11. Review of standardized spent fuel facilities Full Cost.

12. Special projects:

Including approvals, preapplication/licensing activities, and

inspections Full Cost.

13. A. Spent fuel storage cask Certificate of Compliance 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 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 July 25, 2006. 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 (fee categories 15.A through 15.E).

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 \$13,900.

B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not

Commission review. This category includes applications 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 \$8,100.

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

Application – new license, or amendment \$2,600.

- 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 applications 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 \$1,700.

- 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.

Minor amendment \$320.

Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F through 15.R).⁵

Category 1 Exports

- F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).

Application - new license, or amendment \$13,900.

- G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and government to government consent.

Application - new license, or amendment \$8,100.

- H. Application for export of Category 1 materials requiring Commission review and government to government consent.

Application - new license, or amendment \$5,100.

- I. Application for export of Category 1 material requiring government to government consent.

Application - new license, or amendment \$4,300.

Category 2 Exports

- J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).

Application - new license, or amendment \$13,900.

- K. Applications for export of Category 2 materials requiring Executive Branch review and Commission review.

Application - new license, or amendment \$8,100.

- L. Application for the export of Category 2 materials.

Application - new license, or amendment \$3,900.

Category 1 Imports

M. Application for the import of Category 1 material requiring Commission review.

Application - new license, or amendment \$4,100.

N. Application for the import of Category 1 material.

Application - new license, or amendment \$3,400.

Category 2 Imports

O. Application for the import of Category 2 material.

Application - new license, or amendment \$3,000.

Category 1 Imports with Agent and Multiple Licensees

P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review.

Application - new license, or amendment \$4,700.

Q. Application for the import of Category 1 material with agent and multiple licensees.

Application - new license, or amendment \$3,900.

Minor Amendments (Category 1 and 2 Export and Imports)

R. 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 authorities.

Minor amendment \$ 320.

16. Reciprocity:

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

Application \$1,900.

17. Master materials licenses of broad scope issued to Government agencies

Application \$17,800.

18. Department of Energy

A. Certificates of Compliance. Evaluation of casks, packages,

and shipping containers (including spent fuel, high-level waste,
and other casks, and plutonium air packages) Full Cost.

B. Uranium Mill Tailings Radiation Control Act (UMTRCA)
activities Full Cost.

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 would apply.

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

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

² Fees will not be charged for orders 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 §170.20.

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

⁵ For a combined import and export license application for material listed in Appendix P to part 110 of this chapter, only the higher of the two applicable fee amounts must be paid.

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 is revised 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), and as amended by Title IV, Pub. L. 109-103, 119 Stat. 2283 (42 U.S.C. 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).

8. In §171.5, the definition of *Overhead and general and administrative costs* is revised to read as follows:

§171.5 Definitions.

* * * * *

Overhead and general and administrative costs means:

(1) The Government benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Direct overhead [e.g., supervision and support staff that directly support the NRC safety mission areas; administrative support costs (e.g., rental of space, equipment, telecommunications and supplies)]; and

(4) Indirect costs that would include, but not be limited to, NRC central policy direction, legal and executive management services for the Commission and special and independent reviews, investigations, and enforcement and appraisal of NRC programs and operations. Some of the organizations included, in whole or in part, are the Commissioners, Secretary, Executive Director for Operations, General Counsel, Congressional and Public Affairs (except for international safety and safeguards programs), Inspector General, Investigations, Enforcement, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committees on Nuclear Waste and Reactor Safeguards, and the Atomic Safety and Licensing Board Panel. The Commission views these budgeted costs as support for all its regulatory services provided to applicants, licensees, and certificate holders, and these costs must be recovered under Pub. L. 101-508.

* * * * *

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 2006 annual fee for each operating power reactor which must be collected by September 30, 2006, is \$3,704,000.

(2) The FY 2006 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 2006 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2006 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2006 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 2006 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession only status and has spent fuel onsite and each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is \$173,000.

(2) The FY 2006 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 2006 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2006 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 2006 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 2006 surcharge allocated to the operating power reactor class of licenses is \$5.5 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2006 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$53,000. This amount is calculated by dividing the total operating power reactor surcharge (\$5.5 million) by the number of operating power reactors (104).

(3) The FY 2006 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is \$152,000. The FY 2006 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 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is approximately \$1,200. 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 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2006 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	\$80,100.
Test reactor	\$80,100.

10. In §171.16, the section heading and paragraph (d) 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.

* * * * *

(d) The FY 2006 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2006 surcharge are shown for convenience in paragraph (e) of this section. The FY 2006 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)

<u>Category of materials licenses</u>	<u>Annual fees</u> ^{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) \$5,420,000.

(b) Low Enriched Uranium in
Dispersible Form Used for
Fabrication of Power Reactor
Fuel 1,596,000.

(2) All other special nuclear materials
licenses not included in Category 1.A.(1)
which are licensed for fuel cycle activities.

(a) Facilities with limited operations 605,000.

(b) Gas centrifuge enrichment demonstration facilities 991,000.

(c) Hot cell facilities 440,000.

B. Licenses for receipt and storage of spent
fuel and reactor-related Greater than Class C (GTCC)
waste at an independent spent fuel storage
installation (ISFSI) N/A¹¹

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 2,500.

D. All other special nuclear material
licenses, except licenses authorizing
special nuclear material in unsealed
form in combination that would constitute
a critical quantity, as defined in §150.11
of this chapter, for which the licensee
shall pay the same fees as those for
Category 1.A.(2) 6,900.

E. Licenses or certificates for the operation
of a uranium enrichment facility 3,027,000.

2. Source material:

A. (1) Licenses for possession and use of
source material for refining uranium mill
concentrates to uranium hexafluoride 1,046,000.

(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 facilities⁴ 65,900.
- (b) Class II facilities⁴ 65,900.
- (c) Other facilities⁴ 95,900.

(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) N/A⁵

(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) 65,900.

B. Licenses that authorize only the possession, use and/or installation of source material for shielding 890.

C. All other source material licenses 14,800.

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 28,900.

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 9,400.

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 11,600.

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 6,600.

E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) 4,800.

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for

irradiation of materials in which the source is not exposed for irradiation purposes 8,600.

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 in which the source is not exposed for irradiation purposes 31,100.

H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter 19,300.

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 11,700.

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 3,200.

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, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter 1,900.

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 16,400.

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 6,900.

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 7,300.

O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license 15,400.

P. All other specific byproduct material licenses, except those in Categories 4A through 9D 2,900.

Q. Registration of devices generally licensed under part 31 of this chapter N/A¹³

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material,

source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material N/A⁵

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 12,900.

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 9,700.

5. Well logging:

A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies 4,800.

B. Licenses for possession and use of byproduct material for field flooding tracer studies N/A⁵

6. Nuclear laundries:

A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material 27,400.

7. Medical licenses:

A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license 15,100.

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 33,000.

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 6,000.

8. Civil defense:

A. Licenses for possession and use of
byproduct material, source material, or
special nuclear material for civil defense
activities 1,900.

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 25,700.

B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices 25,700.

C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution 2,900.

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 1,000.

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 N/A⁶
2. Other Casks N/A⁶

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

1. Users and Fabricators N/A⁶
2. Users N/A⁶

C. Evaluation of security plans, route approvals,
route surveys, and transportation security devices
(including immobilization devices) N/A⁶

11. Standardized spent fuel facilities N/A⁶
12. Special Projects N/A⁶
13. A. Spent fuel storage cask Certificate of Compliance N/A⁶

B.	General licenses for storage of spent fuel under 10 CFR 72.210	N/A ¹²
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	N/A ⁷
B.	Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed	N/A ⁷
15.	Import and Export licenses	N/A ⁸
16.	Reciprocity	N/A ⁸
17.	Master materials licenses of broad scope issued to Government agencies	373,000.
18.	Department of Energy:	
A.	Certificates of Compliance	1,285,000 ¹⁰ .
B.	Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	732,000.

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, 2006, and permanently ceased licensed activities entirely by September 30, 2006. 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 Categories 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 related Quality Assurance program approvals, 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.

* * * * *

11. In §171.19 paragraphs (b) and (d) are revised to read as follows:

§171.19 Payment.

* * * * *

(b) Annual fees in the amount of \$100,000 or more and described in the *Federal Register* document issued under § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for the previous fiscal year was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year is \$100,000 or greater (subject to quarterly billing), will be issued a bill upon publication of the final rule for the full amount of the revised annual fee for the current fiscal year, less any payments received for the current fiscal year based on the anniversary date billing process.

* * * * *

(d) Annual fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, and 4B through 9D.

* * * * *

Dated at Rockville, Maryland, this 16th day of May, 2006.

For the Nuclear Regulatory Commission.

/RA/ original signed by J. L. Funches

Jesse L. Funches,

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) (Pub. L. 101-508), 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 (Pub. L. 106-377) 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 was 90 percent in FY 2005. The FY 2006 Energy and Water Development Appropriations Act (Pub. L. 109-103) extended this 90 percent fee recovery requirement through FY 2006. As a result, the NRC is required to recover approximately 90 percent of its FY 2006 budget authority, less the amounts appropriated from the Nuclear Waste Fund (NWF) and for Waste incidental to Reprocessing (WIR) activities, through fees. The total amount NRC is required to recover in fees for FY 2006 is approximately \$624.0 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.

The Commission is rebaselining its part 171 annual fees in FY 2006. Rebaselining fees results in increased annual fees for all licensees, with the exception of certain fuel facilities.

The Congressional Review Act of 1996 is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental

jurisdictions. This Act 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. The Congressional Review Act also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. This RFA and the small entity compliance guide (Attachment 1) have been prepared for the FY 2006 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. In FY 2005, about 26 percent of these licensees (approximately 1,200 licensees) requested small entity certification.

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.

Over 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 stated in the RFA 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 Chief Financial Officer's Act. Accordingly, the NRC examined the small entity fees again in FY 2003 (68 FR 36714; June 18, 2003), and determined that a change was not warranted to the small entity fees established in FY 2003.

The NRC again re-examined the small entity fees for FY 2005, and did 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 retained the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2005, and is not changing these fees in FY 2006. 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 2006.

U. S. Nuclear Regulatory Commission
Small Entity Compliance Guide
Fiscal Year 2006

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Introduction

The Congressional Review Act of 1996 (CRA) 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 the CRA. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2006 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 2006 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 (listed in 10 CFR 2.810) 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 website 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 website, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee 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

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

To 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.

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 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.

* * * * *

(d) Annual fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, and 4B through 9D.

* * * * *

Dated at Rockville, Maryland, this 16th day of May, 2006.

For the Nuclear Regulatory Commission.

/RA/ original signed by J. L. Funches

Jesse L. Funches,

Chief Financial Officer.

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