

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AI00

Revision of Fee Schedules; Fee Recovery for FY 2007

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2007, less the amounts appropriated from the Nuclear Waste Fund (NWF), and for Waste Incidental to Reprocessing (WIR) and generic homeland security activities. Based on the FY 2007 Energy and Water Development Appropriations Bill (H.R. 5427), passed by the U.S. House of Representatives, the NRC's required fee recovery amount for the FY 2007 budget is approximately \$663.7 million. After accounting for carryover and billing adjustments, the total amount to be recovered through fees is approximately \$664.9 million. A final appropriation has not been enacted. Thus, the total amount that must be recovered through fees may be different once a final appropriation is enacted.

DATES: The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that the NRC collect the FY 2007 fees by September 30, 2007, requests for extensions of the comment period will not be granted.

ADDRESSES: You may submit comments by any one of the following methods. Please include number RIN 3150-AI00 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

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

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

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

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

To obtain additional information on the NRC's FY 2007 budget request, commenters and others may review NUREG-1100, Volume 22, "Performance Budget: Fiscal Year 2007" (February 2006), which describes the NRC's budget for FY 2007, including the activities to be performed in each program. This document is available on the NRC's public Web site at <http://www.nrc.gov/reading-rm.html>. Note, however, that NUREG-1100, Volume 22, is based on the NRC's FY 2007 budget request to Congress, and that the fees in this rulemaking are based on the version of the NRC's FY 2007 budget approved by the U.S. House of Representatives in H.R. 5427, as discussed in more detail later in this document. The NRC budget in H.R. 5427 includes an additional approximately \$40 million, above the NRC's budget request, for activities such as new reactor licensing and related support. The allocation of the H.R. 5427 budget to planned activities within each program, and to each fee class and surcharge category, is included in the publicly available work papers supporting this rulemaking.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room 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. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209; 301-415-4737 or by e-mail at pdrc@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Renu Suri, telephone 301-415-0161; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
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I. Background

The NRC is required each year, under OBRA-90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. The NRC receives appropriations each year for 10 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), to pay for the costs of agency activities that do provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities under section 274 of the Atomic Energy Act of 1954, as amended.

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 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 NRC is currently operating under a continuing resolution (CR) for FY 2007 (Pub. L. 109-383) that is effective through February 15, 2007. This means that the FY 2007 funds currently available are similar to the NRC's funding in FY 2006. Although the NRC has not received a new appropriation for FY 2007, the NRC must proceed with this rulemaking to collect the required fee amounts by September 30, 2007. Therefore, the NRC is establishing fees in

this rulemaking based on the FY 2007 Energy and Water Development Appropriations Bill (H.R. 5427), passed by the U.S. House of Representatives. The NRC is basing its FY 2007 fees on this version of its FY 2007 appropriations because this amount has been approved by the full House of Representatives. The Senate version of this bill is similar: the total funding is the same, but the allocation of the budget to certain activities is slightly different.

If Congress enacts a different version of the NRC budget than that included in H.R. 5427, the fees in the NRC's FY 2007 final fee rule will be adjusted to reflect the enacted budget. Therefore, fees in the FY 2007 final fee rule may differ from the fees in this proposed rule. The NRC will adjust the FY 2007 final fees based on the enacted version of the budget without seeking further public comment.

For example, if Congress enacts legislation that requires the NRC to operate under a CR for the full FY 2007 and appropriates significantly less to the NRC, the fees in the FY 2007 final fee rule will be modified from the fees in this FY 2007 proposed fee rule, to reflect the reductions in budgeted resources. The NRC's total required fee recovery could be reduced by approximately \$80 million under a full-year CR, as compared to H.R. 5427, although the NRC's exact fee recovery amount would depend on the specific provisions in such legislation. A given licensee's part 171 annual fees under a full-year CR would be either similar to, or less than, the fees included in this proposed fee rule. (Fees in the FY 2007 final fee rule may also change from this proposed fee rule for other reasons, such as changes in the amount expected to be received from part 170 fees in FY 2007 compared to FY 2006.) Under a full-year CR, annual fees for some license fee classes may be affected more than other license fee classes, based on which NRC activities are subject to budget reductions. It is possible that some annual fees

may increase from this proposed rule under a full-year CR, because the NRC's ten percent fee relief, which is used to reduce all annual fees in this proposed rule (discussed more in Section II.B.2, "Application of 'Fee Relief'/Surcharge Changes"), would be reduced. This may occur if a particular license fee class is not subject to budget reductions under a CR, and also receives a smaller annual fee reduction than that included in this proposed fee rule from the NRC's fee relief. The change in appropriations under a full-year CR would be unlikely to have a significant impact on the part 170 hourly rates included in this proposed rule.

Based on H.R. 5427, the NRC's required fee recovery amount for the FY 2007 budget is approximately \$663.7 million, which is increased by approximately \$1.2 million to account for billing adjustments (i.e., expected unpaid invoices), resulting in a total of approximately \$664.9 million that must be recovered through fees in FY 2007.

In accordance with Section 637 of the Energy Policy Act of 2005 (Pub. L. 109-58), the budgeted resources associated with generic homeland security activities are excluded from the NRC's fees each year, beginning with this FY 2007 fee rule. This new legislative provision was discussed in the NRC's FY 2006 proposed and final fee rules (71 FR 7349, February 10, 2006; 71 FR 30721, May 30, 2006), and results in the removal of approximately \$35.3 million from the fee base in FY 2007. These funds cover generic activities – those activities that support an entire license fee class or classes of licensees – such as rulemakings and guidance development. 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 (which include force-on-force exercises) and security plan reviews.

The amount of the NRC's required fee collections is set by law, and is therefore outside the scope of this rulemaking. In FY 2007, the NRC's total fee recovery increased by \$39.9 million from FY 2006, mostly in response to increased workload for new reactor licensing activities. The FY 2007 budget was allocated to the fee classes that the budgeted activities support. As such, the proposed annual fees for reactor licensees increased. The proposed annual fees for most other licensees decreased due to factors such as the removal of generic homeland security resources from the fee base, and other reductions in budgeted resources allocated to the fee classes. Another factor affecting the amount of annual fees for each fee class is the estimated collection under part 170, discussed in the Proposed Action section of this document.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2007 budget authority (less the appropriations received from the NWF, and for WIR and generic homeland security activities). The NRC's total budget authority for FY 2007 (under H.R. 5427) is \$816.6 million. Of that total, approximately \$41 million is appropriated from the NWF, \$2.9 million is budgeted for WIR activities, and \$35.3 million is budgeted for generic homeland security. Based on the 90 percent fee recovery requirement, the NRC must recover approximately \$663.7 million in FY 2007 through part 170 licensing and inspection fees and part 171 annual fees. After accounting for carryover and billing adjustments, the total amount to be recovered through fees is approximately \$664.9 million. The NRC's FY 2007 fee recovery is \$39.9 million more than the amount estimated for recovery in FY 2006, an increase of approximately six percent.

The FY 2007 statutorily required fee recovery amount of \$663.7 million is increased by \$1.7 million to account for billing adjustments (i.e., for FY 2007 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2007 for prior year invoices). There is approximately \$0.5 million FY 2006 carryover to apply to FY 2007 fee collections. This leaves approximately \$664.9 million to be recovered in FY 2007 through part 170 licensing and inspection fees and part 171 annual fees.

The NRC estimates that approximately \$193.4 million will be recovered in FY 2007 from part 170 fees. This represents an increase of approximately five percent as compared to the part 170 collections for FY 2006 of \$185 million. The NRC derived the FY 2007 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 2007 budget, as appropriate. The remaining \$471.5 million will be recovered through the part 171 annual fees in FY 2007, compared to the required part 171 collections of \$441.7 million for FY 2006, an increase of approximately seven percent.

Table I summarizes the budget and fee recovery amounts for FY 2007 (individual values may not sum to totals due to rounding).

TABLE I. - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2007

[Dollars in millions]

Total Budget Authority	\$816.6
Less NWF, WIR, and generic homeland security	<u>-79.2</u>

Balance	\$737.4
Fee Recovery Rate for FY 2007	x 90.0%
Total Amount to be Recovered For FY 2007	\$663.7
Less Carryover from FY 2006	<u>-0.5</u>
Plus Part 171 Billing Adjustments	
Unpaid FY 2007 Invoices (estimated)	5.4
Less Payments Received in FY 2007 for Prior Year Invoices (estimated) ..	<u>-3.7</u>
Subtotal	<u>1.7</u>
Amount to be Recovered Through Parts 170 and 171 Fees	\$664.9
Less Estimated Part 170 Fees	<u>-193.4</u>
Part 171 Fee Collections Required	\$471.5

The FY 2007 final fee rule will be a "major rule" as defined by the Congressional Review Act of 1996. Therefore, the NRC's fee schedules for FY 2007 will become effective 60 days after publication of the final rule in the *Federal Register*. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2007 final rule. For these licensees, payment will be due on the effective date of the FY 2007 rule. Those materials licensees whose license anniversary date during FY 2007 falls before the effective date of the final FY 2007 rule will be billed for the annual fee during the anniversary month of the license at the FY 2006 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2007 rule will be billed for the annual fee at the FY 2007 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC will send an invoice for the amount of the annual fee to reactors, part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more, upon publication of the FY 2007 final rule. For these licensees, payment is due on the effective date of the FY 2007 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2007 annual fee, less payments made in the first three quarters of the fiscal year. Materials licensees with annual fees of less than \$100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2007 falls before the effective date of the FY 2007 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2006 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2007 final rule will be billed for the annual fee at the FY 2007 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, as a cost saving measure, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees. Accordingly, the NRC does not plan to routinely mail the FY 2007 final fee rule or future final fee rules to licensees.

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. The NRC plans to publish the final fee rule no later than June 2007. In addition to publication in the *Federal Register*, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

The NRC is proposing to amend 10 CFR parts 170 and 171 as discussed in Sections II.A and II.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 proposing to establish one hourly rate to recover the full cost of activities under part 170, and to use this rate to calculate “flat” application fees. Additionally, this rule proposes to revise the license application fees to (a) reflect the FY 2007 hourly rate and to comply with the requirement under the Chief Financial Officers (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838) that fees be reviewed biennially and revised as necessary to reflect the cost to the agency, (b) establish new flat fees for requests for exemptions from import/export licensing requirements, and (c) change facilities flat fees to full cost fees. It also proposes to establish new fee categories under §170.31 and make minor administrative changes for purposes of clarification and consistency.

The NRC is proposing the following changes:

1. Hourly Rate.

The NRC is proposing to establish in §170.20 one professional hourly rate for NRC staff time. This would be a change from the current policy of using two hourly rates, one for the Nuclear Reactor Safety (Reactor) Program, and one for the Nuclear Materials and Waste Safety (Materials) Program.

From FY 1988 through 1994, the NRC used one agency-wide professional hourly rate. In the FY 1995 fee rule (60 FR 32218; June 20, 1995), the NRC replaced the single rate with two professional hourly rates based on 'cost center concepts' used for budgeting purposes, to more closely align budgeted costs with specific fee classes. The average difference in hourly costs between the Reactor and Materials Programs has been small for a number of years. From FY 1998 through FY 2006, the average difference in these rates was approximately two percent. The NRC does not have reason to believe that these two rates will be notably different from each other in the future. Additionally, the NRC incurs administrative burden in calculating and billing two different hourly rates. Therefore, the NRC is proposing to return to the use of one hourly rate.

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The FY 2007 proposed hourly rate is \$256. This rate would be applicable to all activities for which fees are assessed under §§170.21 and 170.31. In the FY 2006 final fee rule, the Reactor and Materials Program rates were \$217 and \$214, respectively.

The FY 2007 proposed hourly rate is higher than the FY 2006 Reactors and Materials Program rates mainly because of a downward revision to the NRC's estimate of direct hours worked per full-time equivalent employee (FTE) per year, which is used in the denominator of the hourly rate calculation (described in further detail later in this document). It is also higher due to Government-wide pay raises.

The NRC's single hourly rate would be derived by dividing the sum of budgeted resources for (1) mission direct labor; (2) mission indirect (or program overhead) labor and non-

labor activities (including mission direct travel); and (3) agency overhead labor and non-labor activities, by mission direct hours. The only budgeted resources excluded from the hourly rate are those for mission direct nonlabor (i.e., contract) activities. This method is consistent with the existing approach for calculating hourly rates for the Reactor and Materials Programs. The only difference is that the formula used to derive one average NRC hourly rate would be based on total NRC budgeted resources (excluding HLW, WIR, and generic homeland security), rather than using this same formula to calculate two rates based on resources allocated to the Reactor and Materials Programs.

As noted previously, the FY 2007 proposed hourly rate is higher than the FY 2006 Reactors and Materials rates mainly due to a revision to the NRC's estimate of direct hours per FTE per year. The NRC last revised its estimate of direct hours worked annually per direct FTE in the FY 2005 final fee rule (70 FR 30525; May 26, 2005), when it began using an estimate of 1,446 hours. As explained in the FY 2005 final fee rule, this estimate is based on data from the NRC's time and labor system. The NRC has again reviewed data from its time and labor system to determine if this estimate requires updating for the FY 2007 fee rule. Based on this review of the most recent data available, the NRC determined that 1,287 is its best estimate of direct hours worked annually per FTE. This estimate excludes all non-mission direct hours, such as training, general administration, and leave. Because the NRC's hourly rates are calculated by dividing annual budgeted costs by the product of budgeted mission direct FTE and average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculation, the higher the hourly rates.

The NRC is proposing to update its hourly rate calculation to reflect its latest estimate of direct hours per FTE to more accurately reflect the NRC's costs of providing part 170 services,

which would allow the NRC to more fully recover the costs of these services through part 170 fees. The NRC believes that this is consistent with guidance provided in the Office of Management and Budget Circular A-25 on recovering the full cost of services provided to identifiable recipients. The resulting higher hourly rate would result in both increased full cost fees for licensing and inspection activities, and increased materials flat fees for license applications.

Because costs not recovered under part 170 are recovered through part 171 annual fees, the increase in total part 170 fees (caused by the hourly rate increase) would result in a reduction to total annual fees of the same amount. As such, this hourly rate increase would shift some fee recovery from part 171 annual fees to part 170 fees for licensee-specific services. This change supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services vs. part 171 annual fees. (Because the invoices reflecting these increased part 170 fees will not be paid by licensees until FY 2008—in light of the effective date of the FY 2007 final rule and the timing of the NRC's regular billing cycle—the reduction in annual fees from this change would not occur until FY 2008.)

Because annual fees are adjusted to recover the remainder of the budgeted resources for a license fee class not recovered under part 170, the total estimated fees (parts 170 plus 171) recovered from a license fee class would be the same regardless of the amount of the hourly rate. However, when implemented, higher hourly rates would result in some individual licensees paying less total fees than if this change were not enacted. This is true for those licensees for whom the NRC performs fewer hours of part 170 services than it does, on

average, for a licensee in that class. Similarly, licensees for which the NRC performs more hours of part 170 services will pay more in total fees under the proposed higher hourly rate.

Table II shows the results of the 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 2007 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

Mission Direct Program Salaries & Benefits	\$250.9M
Mission Indirect (Program Overhead) Salaries & Benefits, and Mission Direct Travel	105.6M
Agency Management and Support	<u>247.2M</u>
Subtotal	603.7M
Less Offsetting Receipts	<u>- 0.1M</u>
Total Budget Included in Hourly Rate	\$603.6M
 Mission Direct FTEs	 1,835
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE times 1,287 hours)	\$256

As shown in Table II, dividing the \$603.6 million budgeted amount (rounded) included in the hourly rate by total mission direct hours (1,835 FTE times 1,287 hours) results in an hourly rate of \$256. The hourly rate is rounded to the nearest whole dollar.

2. “Flat” Application Fee Changes.

a. Revised Flat Fees. The NRC is proposing to adjust the current flat application fees in §§170.21 and 170.31 to reflect the revised hourly rate of \$256 and the results of the biennial review of part 170 fees required by the CFO Act of 1990. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2007.

To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials users fee categories subject to flat application fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2005 final fee rule. Thus, the revised average professional staff hours in this proposed fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

As a result of the biennial review, the proposed application fees for materials users are based on the average professional staff hours that reflect an increase in average time for new license applications for four of the 34 Materials Program fee categories, a decrease in average time for six fee categories, and the same average time for the remaining 24 fee categories. [Note that for fee category 3.H., the NRC used seven years of data (rather than five) to

determine the average application hours, to mitigate the significant fee 'swings' resulting from large changes to this estimate in the past two biennial reviews, which the NRC believes are more a function of data anomalies than substantive changes.] The average time for new license applications and amendments for export and import licenses increased for seven fee categories in §§170.21 and 170.31, and remained the same for the others. The proposed reciprocity fee reflects a slight decrease in the average time supporting these licenses. The registration fee for general licensees (fee category 3.Q. under §170.31) also decreased.

The higher hourly rate of \$256 is the main reason for the increases in the application fees. Application fees for some fee categories (K.3., K.4., and K.5. under §170.21; and 3.C., 3.N., 3.O., 15.C., 15.D., 15.E., 15.R., and 17 under §170.31) also increase because of the results of the biennial review of fees, which showed an increase in average time to process these types of license applications. (As discussed in the FY 2006 final fee rule, the average hours to process a category 17 application are based on similar licenses of broad scope.)

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.S., 4.B. through 9.D., 10.B, 15.A. through 15.R., 16, and 17 of §170.31. Applications filed on or after the effective date of the FY 2007 final fee rule would be subject to the revised fees in the final rule.

b. **Flat Fees for Import/Export License Exemption Requests.** The NRC is proposing to charge part 170 flat fees for requests for exemptions from import/export licensing requirements. The same fees would apply to these requests for exemptions as apply to requests for import/export licenses, because the NRC incurs similar costs in reviewing a license application as it does in reviewing an exemption request. The NRC does not receive many requests for exemptions from import/export licensing requirements, but is proposing to assess part 170 fees for these requests to comply with IOAA direction to recover the full costs of the services it provides to identifiable recipients.

c. **Change Facilities Flat Fees to Full Cost Fees.** The NRC is proposing to eliminate the flat application fees in §170.21 A (application for a nuclear power reactor construction permit), C (application for a test facility/research reactor/critical facility construction permit), D (application for a manufacturing license), and G (application for other production and utilization facility construction permit), and instead charge full cost part 170 fees for these activities. Footnote 1 to §170.21 would also be modified to eliminate reference to provisions relating to these flat fees. The NRC is proposing to make this change because it does not have recent data on average professional hours associated with these types of applications. Therefore, the NRC believes it is more appropriate to charge full cost fees for these types of activities.

The NRC is also proposing to eliminate fee category F, “Advanced Reactors”, in §170.21. This is because applications of this type are already covered under other fee

categories (e.g., fee category A, “Nuclear Power Reactors”). The definition of “Advanced Reactor” under §170.3 would also be eliminated.

3. New Fee Categories.

The NRC is proposing to amend §170.31 to establish a new fee category (2.A.(5)) for uranium water treatment facilities. The NRC recently received a license application for this type of facility, which was unique to the NRC and therefore not covered by existing fee categories. Accordingly, the NRC charged this applicant full cost part 170 fees for reviewing its application under the “special project” fee category in §170.31. Because the NRC is proposing to add a fee category under §171.16 to establish an annual fee for this type of facility (see Section II.B.4.b of this document), the NRC is also proposing to add the same new fee category under §170.31, to maintain consistency of the fee categories under parts 170 and 171. This new fee category under §170.31 would state that these facilities are subject to full cost licensing and inspection fees.

The NRC is also proposing to update the fee amounts for some new and revised proposed fee categories that were included in another NRC rulemaking. The NRC published a proposed rule on July 28, 2006 (71 FR 42952) titled, “Requirements for Expanded Definition of Byproduct Material,” which would amend its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material, as required by the Energy Policy Act of 2005. This July 28, 2006, rule proposed to establish three new fee categories and revise one existing fee category. These

new and revised fee categories would include activities not currently covered by the NRC's existing regulations, but which would be covered by the July 28, 2006, proposed rule. As explained in that proposed rule (71 FR 42967), which was published before the effective date of the FY 2006 final fee rule, the fee amounts quoted reflected FY 2005 rates and budgeted resources. The NRC revises its fees each year in light of the current fiscal year budget and other factors. Accordingly, this document provides the proposed fee amounts for these new and revised fee categories based on the FY 2007 budget and proposed hourly rates.

The new and revised fee categories included in the July 28, 2006, proposed rule on the expanded definition of byproduct material are not included in this FY 2007 proposed fee rule for public comment. This is because these new and revised fee categories will be finalized as part of the NRC's final rule on the expanded definition of byproduct material. The NRC expects to publish a final rule on the requirements for the expanded definition of byproduct material in mid-2007. The fee calculation methodology and FY 2007 fee amounts for these new and revised fee categories are proposed for public comment as part of this FY 2007 proposed fee rule.

The NRC's proposed rule on the expanded definition of byproduct material would establish a new fee category 3.R.(1), for individuals possessing quantities greater than the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5), but less than or equal to 10 times these quantities. That rule proposed that the application and annual fees for 3.R.(1) be the same as those for fee category 8 under §170.31, given the similarity in regulatory effort. The FY 2007 proposed application and annual fees for the new fee category 3.R.(1) continue to be based on the level of effort for fee category 8, and are \$590 and \$2,100, respectively.

The proposed rule on the expanded definition of byproduct material would also establish a new fee category 3.R.(2), for individuals possessing quantities greater than 10 times the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5). That rule proposed that the application and annual fees for 3.R.(2) be the same as those for fee category 3.P. under §170.31, given the similarity in regulatory effort. The FY 2007 proposed application and annual fees for the new fee category 3.R.(2) continue to be based on the level of effort for fee category 3.P., and are \$1,400 and \$2,700, respectively.

Additionally, the proposed rule on expanding the definition of byproduct material would also establish a new fee category 3.S., for the production of accelerator-produced radioactive materials. That rule proposed that the application and annual fees for 3.S. be the same as those for fee category 3.C. under §170.31, given the similarity in regulatory effort. The FY 2007 proposed application and annual fees for fee category 3.C. are \$8,000 and \$11,800, respectively. The proposed application and annual fees for fee category 3.S. are \$8,000 and \$10,800, respectively. The proposed fees for fee category 3.S. continue to be based on the level of effort associated with fee category 3.C. licensees. The proposed annual fee for 3.S. is slightly less than that for 3.C. because the 3.S. fee does not include a portion of the low-level waste (LLW) surcharge, while the 3.C. fee does. This is because the licensees in fee category 3.C. directly benefit from the NRC's LLW activities, but the licensees in fee category 3.S. do not. (The LLW surcharge is included only in part 171 annual fees, and therefore does not affect the part 170 application fees.)

Finally, the proposed rule on expanding the definition of byproduct material would revise the scope of fee category 3.B. to include licenses for repair, assembly, and disassembly of products containing radium-226. The FY 2007 proposed application and annual fees for fee category 3.B. are \$4,500 and \$8,300, respectively.

Fees associated with the new and revised fee categories for the expanded definition of byproduct material will not be applicable until the effective date of the FY 2007 final fee rule (approximately early August 2007), or the effective date of the NRC's final rule on the expanded definition of byproduct material, whichever is later. FY 2007 fees will be applicable to those new fee categories as of that date. As mentioned previously, these fee amounts will be updated each year.

Note that the specific application and inspection hours used in the part 170 and 171 fees for all categories of materials users licensees, are included in the publicly available work papers supporting this proposed rulemaking. The calculation method used to determine materials users annual fees is explained in Section II.B.4.g of this document.

4. Administrative Amendments.

The NRC is proposing to revise §§170.3 and 170.12 to clarify that unless otherwise specifically exempted, all specific services provided by the Commission are "special projects" for which full cost fees will be assessed under part 170. This is consistent with NRC's existing practice and regulations, but the proposed revisions more clearly state this.

The NRC is also proposing to make other minor administrative changes. The NRC is proposing to eliminate the definitions for “Indian organization” and “Indian tribe” in §170.3, because these terms are no longer used in part 170. In §170.31, fee category 1.A.(2)(c) would be modified to state that it includes all ‘other’ licenses for fuel cycle activities under fee category 1.A(2), including hot cell facilities. The NRC is also proposing to eliminate the reference to footnote 4 in §170.31, fee categories 2.A.(2)(a), 2.a.(2)(b), and 2.A.(2)(c), as this footnote is not applicable to these fee categories. Footnote 1(b) under §170.31 is also proposed to be revised to eliminate the listing of all full cost fee categories to eliminate redundancy. Additionally, footnote 1(c) under §170.31 is proposed to be revised to eliminate reference to amendments for licenses other than import and export licenses, as flat fees for other license amendments no longer apply. Finally, fee category 7.B. in §170.31 is slightly modified so that the language describing this fee category is the same under both parts 170 and 171.

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

1. Establish one FY 2007 professional hourly rate of \$256 to use in assessing fees for specific services;

2. Revise the license application fees to (a) reflect the FY 2007 hourly rate and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency, (b) establish new flat fees for requests for exemptions from import/export licensing requirements, and (c) change facilities flat fees to full cost fees;

3. Establish new fee categories under §170.31; and
4. Make minor administrative changes for purposes of clarification and consistency.

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.

Beginning with this FY 2007 fee rule, the NRC is proposing to remove generic homeland security budgeted resources from the fee base. The NRC is also proposing to use its fee relief to reduce all licensees' annual fees, and modify some surcharge categories. This rulemaking also proposes to codify the NRC's policy regarding when the assessment of annual fees begins, and establish rebaselined annual fees based on the NRC's FY 2007 budget in H.R. 5427. Additionally, the NRC is proposing to revise the way it prorates annual fees for materials licenses of \$100,000 or more, and establish some new fee categories. Finally, the NRC is proposing some minor administrative amendments under part 171. The proposed amendments are described as follows:

1. Removal of Generic Homeland Security Budgeted Resources from the Fee Base.

As mentioned previously, the budgeted resources associated with generic homeland security activities are excluded from the NRC's fees each year, beginning with this FY 2007

rulemaking, in accordance with the Energy Policy Act of 2005. As a result, \$35.3 million is removed from the NRC's required annual fee recovery in FY 2007. These funds cover generic homeland security activities such as rulemakings and guidance development. 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 (which include force-on-force exercises) and security plan reviews.

2. Application of "Fee Relief"/Surcharge Changes.

The NRC is proposing to use its fee relief to reduce all licensees' annual fees, based on their percent of the budget. Additionally, the NRC is proposing to make some revisions to the activities included in the surcharge.

The NRC applies the 10 percent of its budget that it receives as fee relief under OBRA-90, as amended, to offset the costs of activities for which it does not charge fees or charges reduced fees. The costs of these "surcharge" activities are totaled, and then reduced by the amount of the NRC's fee relief. In prior years, any remaining surcharge costs were then allocated to all licensees' annual fees, based on their percent of the budget (i.e., over 80 percent was allocated to power reactors each year).

In FY 2007, the NRC's 10 percent fee relief exceeds the total surcharge costs by approximately \$9.6 million. Therefore, the NRC is proposing to use this fee relief to reduce all licensees' annual fees, based on their percent of the budget. This is consistent with the existing fee methodology, in that the benefits of the NRC's fee relief are allocated to licensees

in the same manner as costs were allocated, when the NRC did not receive enough fee relief to pay for surcharge activities.

The NRC is also proposing to modify some surcharge categories. First, the NRC is proposing to add a new surcharge category in FY 2007 for the costs associated with a rulemaking on groundwater protection at in-situ leach (ISL) uranium extraction facilities. This change is in accordance with Commission Staff Requirements Memorandum COMJSM-06-0001, "Regulation of Groundwater Protection at In Situ Leach Uranium Extraction Facilities" (ML060830525). Second, the NRC is proposing to eliminate the surcharge category for specific services to other Federal agencies, because these agencies became subject to part 170 fees to recover the costs of these services as of the effective date of the FY 2006 final fee rule. Third, the NRC is proposing to eliminate the surcharge category for activities supporting unlicensed sites, because the NRC now charges part 170 fees to owners or operators of unlicensed sites in decommissioning (beginning July 25, 2006). All generic decommissioning resources associated with these sites have been allocated to the generic decommissioning/reclamation surcharge category. The budgeted resources associated with unregistered general licensees, previously included in the unlicensed sites surcharge category, are added to the new surcharge category that includes the ISL rulemaking.

Note the NRC is also modifying the way it calculates the resources included in the generic decommissioning/reclamation surcharge category, which includes decommissioning resources for all fee classes except power reactors and the spent fuel storage/reactor decommissioning fee class. This is not a substantive or policy change, but rather a calculation method change that will result in a more accurate estimate of the actual costs of generic decommissioning/reclamation activities. In previous years, the budgeted resources allocated to

each fee class included budgeted resources for site-specific decommissioning activities, and then the part 170 estimated decommissioning revenue was subtracted from each fee class. Beginning in FY 2007, all budgeted resources for decommissioning/reclamation activities (for fee classes other than power reactors and spent fuel storage/reactor decommissioning) are initially allocated to the generic decommissioning/reclamation surcharge category. This total is then reduced by the total estimated part 170 decommissioning revenue from all licensees (other than those in the power reactor and spent fuel storage/reactor decommissioning fee classes). The NRC is explaining this change because it results in a reduction in both the total allocated budgeted resources and estimated part 170 revenue for the affected fee classes, which are shown in Section II.B.4, "Revised Annual Fees," of this document.

The total budgeted resources for the NRC's surcharge activities in FY 2007 are \$64.1 million. The NRC's total fee relief in FY 2007 is \$73.7 million, leaving \$9.6 million in fee relief to be used to reduce all licensees' annual fees. These values are shown in Table III (individual values may not sum to totals due to rounding).

TABLE III. - SURCHARGE COSTS

[Dollars in millions]

<u>Category of costs</u>	<u>FY 2007 budgeted costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$12.7
b. Agreement State oversight	\$9.1

2.	Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a.	Fee exemption for nonprofit educational institutions	\$8.7
b.	Costs not recovered from small entities under 10 CFR 171.16(c)	\$5.1
3.	Activities supporting NRC operating licensees and others:	
a.	Regulatory support to Agreement States	\$11.1
b.	Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	\$14.9
c.	ISL rulemaking and unregistered general licensees	\$2.5
	Total surcharge costs	\$64.1
	Less 10 percent of NRC's FY 2007 total budget (less NWF, WIR, and generic homeland security activities)	<u>-\$73.7</u>
	Fee Relief to be Allocated to All Annual Fees	-\$9.6

Table IV shows how the NRC is proposing to allocate the \$9.6 million in fee relief to each license fee class (individual amounts may not sum to totals due to rounding). As explained previously, the NRC is proposing to allocate this fee relief to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee relief would then be used to partially offset the required annual fee recovery from each fee

class. The proposed revisions to §§171.15(d)(1) and 171.16(e) would clarify that the surcharge allocated to annual fees may be negative, i.e., an annual fee reduction.

Separately, the NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposal of certain classes of licenses. Table IV also shows the allocation of the LLW surcharge. Because LLW activities support NRC licensees, the costs of these activities are not offset by the NRC's fee relief. For FY 2007, the LLW surcharge costs are \$3.4 million. Because the allocated LLW surcharge exceeds the fee relief allocated to the materials users fee class, the annual fee recovery for this fee class includes a net addition to its annual fees for the surcharge costs.

TABLE IV. - ALLOCATION OF FEE RELIEF AND LLW SURCHARGE

	LLW surcharge		Fee Relief (fee reduction)		Total surcharge
	<u>Percent</u>	<u>\$M</u>	<u>Percent</u>	<u>\$M</u>	
Operating Power Reactors	74	2.6	87.7	-8.4	-5.8
Spent Fuel Storage/ Reactor Decomm.	---	---	3.6	-0.3	-0.3
Test and Research Reactors	---	---	0.1	0	0
Fuel Facilities	8	0.3	4.9	-0.5	-0.2

Materials Users	18	0.6	3.2	-0.3	0.3
Transportation	---	---	0.3	0	0
Rare Earth Facilities	---	---	0.0	0	0
Uranium Recovery	<u>---</u>	<u>---</u>	<u>0.2</u>	<u>0</u>	<u>0</u>
Total Surcharge	100	3.4	100.0	-9.6	-6.1

3. Codification of Policy Regarding When the Assessment of Annual Fees Begins.

The Commission is proposing to modify §§171.3 and 171.16, to codify its longstanding practice regarding when the assessment of annual fees begins for licensees subject to regulations that require a specific NRC authorization to operate subsequent to the NRC issuing the license. For these licensees, annual fees will not be assessed until the NRC grants this authorization. At the present time, this codification only affects new uranium enrichment licensees, as described further in this document. (The NRC's regulations already provide that part 52 combined operating license holders are not subject to annual fees until the Commission authorizes fuel load and operation of the reactor. This is also described further in this document.)

All other licensees will continue to be subject to annual fees at the time the license is issued. This is consistent with the policy that annual fees are assessed to licensees based on the benefits of receiving the NRC's authorization to operate, whether or not the licensee chooses to operate (with the exception of power reactors in decommissioning or possession only status, which are assessed annual fees if they have spent fuel onsite). Once a facility is authorized to operate, it continues to pay its annual fee(s) even if it shuts down for safety or other reasons and needs Commission approval to restart.

These amendments codify previous Commission decisions on this issue. The Commission first adopted this fee policy when it did not assess annual fees on those entities holding only a power reactor construction permit. The Commission indicated its intention to continue this policy when it included a provision in the Fiscal Year 2002 final fee rule (67 FR 42611; June 24, 2002), which expanded the scope of part 171 to cover combined licenses authorizing operation of a power reactor (part 52 licenses). The Statement of Considerations for this June 2002 final rule further explained that an annual fee for part 52 licensees will only be assessed after construction has been completed, all regulatory requirements have been met, and the Commission authorizes operation of the reactor. Additionally, the NRC published a proposed rule on March 13, 2006 (71 FR 12782), "Licenses, Certifications, and Approvals for Nuclear Power Plants," that included a provision that states that a combined license holder does not have to pay an annual fee until the Commission authorizes fuel load and operation.

Other than part 52 licenses, a uranium enrichment facility is the only other current type of licensee subject to regulations that require a specific NRC authorization to operate subsequent to the NRC issuing the license. In the case of uranium enrichment facilities, this authorization occurs after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license, as required by 10 CFR 40.41(g) and 10 CFR 70.32(k). Therefore, the Commission is proposing to codify its policy that annual fees for uranium enrichment facilities would be assessed at that time.

In the future, should the NRC amend its regulations to require specific authorizations for other types of licenses before the licensee may operate, the NRC will revise part 171 to

explicitly state that these other types of licenses are also not subject to annual fees until the NRC grants the required authorization(s).

4. Revised Annual Fees.

The NRC is proposing to revise its annual fees in §§171.15 and 171.16 for FY 2007 to recover approximately 90 percent of the NRC's FY 2007 budget authority (less the amounts appropriated from the NWF, and for WIR and generic homeland security activities), less the estimated amount to be recovered through part 170 fees. The total amount to be recovered through annual fees for FY 2007 is \$471.5 million. The required annual fee collection in FY 2006 was \$441.7 million.

The NRC uses one of two methods to determine the amounts of the annual fees, for each type of licensee, 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 proposing to establish revised annual fees for FY 2007 using the rebaseline method because of significant budget changes in the areas of new reactor licensing and homeland security. As explained in the FY 2006 final fee rule, the Commission has determined that the agency should proceed with a presumption in favor of rebaselining in calculating annual fees each year, and that the percent change method should be used infrequently. This is

because the Commission expects that most years there will be budget and other changes that warrant the use of the rebaseline method.

Rebaselining fees results in increased annual fees compared to FY 2006 for two classes of licenses (power reactors and non-power reactors), and decreased annual fees for five classes of licenses (spent fuel storage/reactor decommissioning, fuel facilities, uranium recovery, rare earth, and transportation). Within the materials users fee class, annual fees for most of the categories (sub-classes) of licenses decrease, while annual fees for some increase or remain the same.

The most significant factors affecting the changes to the annual fee amounts are the increase in budgeted resources for new reactor activities, and the removal of generic homeland security resources from the fee base in accordance with the Energy Policy Act of 2005. The NRC's total fee recoverable budget, as mandated by law, is approximately \$40 million larger in FY 2007 as compared to FY 2006. Because much of this increase is for the additional workload demand in the area of new reactor licensing, this increase mainly affects the reactor annual fees. Other factors affecting all annual fees include adjustments in the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2007) 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 2006 to FY 2007.

Table V shows the rebaselined annual fees for FY 2007 for a representative list of categories of licenses. The FY 2006 fee is also shown for comparative purposes.

TABLE V. - REBASELINED ANNUAL FEES FOR FY 2007

<u>Class/category of licenses</u>	<u>FY 2006</u>	<u>FY 2007</u>
	<u>Annual Fee</u>	<u>Annual Fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,704,000	\$4,088,000
Spent Fuel Storage/Reactor Decommissioning	173,000	150,000
Test and Research Reactors (Non-power Reactors)	80,100	92,300
High Enriched Uranium Fuel Facility	5,420,000	4,451,000
Low Enriched Uranium Fuel Facility	1,596,000	1,345,000
UF ₆ Conversion Facility	1,046,000	881,000
Conventional Mills	65,900	35,700
Typical Materials Users:		
Radiographers	15,400	14,100
Well Loggers	4,800	4,300
Gauge Users (Category 3P)	2,900	2,700
Broad Scope Medical	33,000	28,800

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 2007 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 2006 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-rm/adams.html>. During the 30-day public comment period, 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.

a. Fuel Facilities.

The FY 2007 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under §171.16] is approximately \$20.6 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 (see Section II.B.4.h of this document for further discussion), and billing adjustments. The summary calculations used to derive this value are presented in Table VI for FY 2007, with FY 2006 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 2006</u>	<u>FY 2007</u>
<u>Fuel Facility Fee Class</u>	<u>Final</u>	<u>Proposed</u>

Total budgeted resources		\$39.6		\$31.9
Less estimated part 170 receipts	-	<u>\$15.8</u>	-	<u>\$11.7</u>
Net part 171 resources		\$23.8		\$20.2
Plus allocated generic transportation	+	\$0.4	+	\$0.6
Plus allocated surcharge	+	\$0.5	-	\$0.2
Billing adjustments (including carryover)	+	<u>\$0.0</u>	+	<u>\$0.1</u>
Total required annual fee recovery		\$24.8		\$20.6

The decrease in fuel facilities FY 2007 total budgeted resources compared to FY 2006 is due mostly to exclusion of homeland security generic activities from the fee base, as well as lower budgeted resources for certain activities.

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 31447; 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. Second, 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 allocated to the fuel facility fee class (which is a fee reduction in FY 2007) 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 of 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 that the effort factors for the High Enriched Uranium Fuel fee category have changed from FY 2006. The safeguards factor increased in FY 2007 to reflect greater workload in the area of handling sensitive and classified information. The safety factor is lower in FY 2007 to reflect lower effort factors for pellet processing activities for this fee category. Taking into account both of these changes, the total safety and safeguards effort factor change is relatively small.

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	91 (35.5)	101 (53.4)
Uranium Enrichment	2	70 (27.3)	40 (21.2)
Low Enriched Uranium Fuel	3	66 (25.8)	21 (11.1)
UF ₆ Conversion	1	12 (4.7)	7 (3.7)
Limited Operations	1	8 (3.1)	3 (1.6)
Gas Centrifuge Enrichment			
Demonstration	1	3 (1.2)	15 (7.9)
Hot Cell	1	6 (2.3)	2 (1.1)

Applying the FY 2007 effort factors (as summarized in Table VII) to the safety, safeguards, and surcharge components of the \$20.6 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VIII.

TABLE VIII. - ANNUAL FEES FOR FUEL FACILITIES

<u>Facility type (fee category)</u>	<u>FY 2007 annual fee</u>
High Enriched Uranium Fuel	\$4,451,000
Uranium Enrichment	\$2,550,000
Low Enriched Uranium	\$1,345,000
UF ₆ Conversion	\$881,000
Gas Centrifuge Enrichment Demonstration	\$835,000
Limited Operations Facility	\$510,000

Hot Cell (and others) \$371,000

Note that the NRC issued a construction and operation license to a new uranium enrichment facility in June 2006. As explained in Section II.B.3, “Codification of Policy Regarding When the Assessment of Annual Fees Begins” of this document, this facility would not be subject to annual fees until the Commission authorizes operation by verifying through inspection that the facility has been constructed in accordance with the requirements of the license, as required by 10 CFR 40.41(g) and 10 CFR 70.32(k). The annual fee applicable to any type of new uranium enrichment facility is the annual fee in §171.16, fee category 1.E., Uranium Enrichment, unless the NRC establishes a new fee category for these facilities.

b. Uranium Recovery Facilities.

The total FY 2007 budgeted cost to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under §171.16], is approximately \$0.86 million. The derivation of this value is shown in Table IX, with FY 2006 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 2006 Final</u>	<u>FY 2007</u>
<u>Uranium Recovery Fee Class</u>		<u>Proposed</u>
Total budgeted resources	\$2.34	\$1.30
Less estimated part 170 receipts	- <u>\$1.29</u>	- <u>\$0.43</u>
Net part 171 resources	\$1.05	\$0.87
Plus allocated generic transportation	+ N/A	+ N/A
Plus allocated surcharge	+ \$0.01	- \$0.02
Billing adjustments (including carryover)	+ <u>\$0.00</u>	+ <u>\$0.00</u>
Total required annual fee recovery	\$1.06	\$0.86

The decrease in the total required annual fee recovery is mainly due to a reduction in uranium recovery licensing and inspection resources allocated to this fee class for fee recovery. One main reason for this reduction is the reallocation of uranium recovery licensing and inspection resources to a rulemaking on groundwater protection at ISL uranium extraction facilities. These resources are allocated to the surcharge in FY 2007, consistent with the Commission direction on this matter, as discussed in Section II.B.2, "Application of 'Fee Relief'/Surcharge Changes," of this document.

Of the required annual fee collections, approximately \$657,000 would be assessed to the Department of Energy for its Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I and Title II licensees under fee category 18.B. The remaining \$200,000 would be recovered through annual fees assessed to the other licensees in this fee class, i.e., conventional mills, in-situ leach solution mining facilities, 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites), and a uranium water treatment facility (discussed further in this document).

The NRC is proposing to add to the uranium recovery fee class a new fee category (2.A.(5) under §171.16) for uranium water treatment facilities. This is because the NRC may license a facility of this type during FY 2007, and therefore is proposing to establish the associated annual fee in this fee rule. The NRC is proposing to establish a new fee category for this type of facility because the NRC has not previously licensed a facility of this type, and therefore the existing fee categories do not clearly cover this type of facility. Although included in the uranium recovery fee class, this type of facility is a separate fee category within this fee class. The methodology for calculating the proposed annual fee for this type of facility is the same as that used for other facilities in this fee class, but different input values are used in the fee matrix to determine the actual fee amount for this facility (as described further in this document), resulting in a different fee amount for this new fee category.

In the FY 2002 final fee rule (67 FR 42611; June 24, 2002), the NRC established a fee recovery methodology for the uranium recovery fee class that would allocate the total annual fee amount for this fee class, less the amounts specifically budgeted for Title I activities, equally between DOE (for its UMTRCA Title I and Title II licensees) and the other licensees in this fee class. The NRC is proposing to slightly change this methodology, beginning with the FY 2007 proposed fee rule, so that 45 percent of the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated to DOE's UMTRCA annual fee. The remaining 55 percent of the total annual fee amount (less the amounts specifically budgeted for Title I activities) would be allocated to the other licensees in this fee class. The NRC is proposing this change because, as mentioned previously, the uranium recovery fee class would include a new type of facility in FY 2007 (fee category 2.A.(5), uranium water treatment). Because the resources associated with this new facility are less directly related to DOE UMTRCA activities than are the resources for other licensees in this fee class, the NRC

believes it is appropriate to allocate a somewhat smaller percentage of the generic resources supporting this fee class to DOE.

This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC’s Title I activities plus 45 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 55 percent of the surcharge and generic/other costs are assessed to the other NRC licensees in this fee class 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	\$ 493,586
45 percent of generic/other uranium recovery budgeted costs	171,447
45 percent of uranium recovery surcharge	- <u>7,993</u>
Total Annual Fee Amount for DOE (rounded)	657,000

Annual Fee Amount for Other Uranium Recovery Licenses:

55 percent of generic/other uranium recovery budgeted costs	209,546
55 percent of uranium recovery surcharge	- <u>9,770</u>
Total Annual Fee Amount for Other Uranium Recovery Licenses	199,776

The NRC is proposing to continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with regulating the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately \$200,000 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2007 proposed matrix, which includes some modifications from the FY 2006 matrix, and the methodology using this matrix, is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2007, these categories are conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities. The uranium water treatment facility is a proposed new fee category in the uranium recovery fee class in FY 2007, as mentioned previously.

Second, the matrix identifies the types of operating activities that support these licensees. In FY 2007, the activities related to generic decommissioning/reclamation are no longer included in the matrix, because generic decommissioning/reclamation activities are included in the surcharge, and therefore need not be a factor in determining annual fees. The activities included in the FY 2007 proposed matrix are 'operations,' 'waste operations,' and 'groundwater remediation.' The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The 'operations,' 'waste operations,' and 'groundwater remediation' activities have weights of 10, 5, and 10, respectively, in the FY 2007 proposed matrix.

Once the structure of the matrix is established, the NRC’s uranium recovery project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fee category, separate effort factors for each type of regulatory activity in the matrix. Effort factors are assigned as follows: zero (no regulatory effort), two (minor regulatory effort), five (some regulatory effort), and ten (significant regulatory effort). These effort factors are first multiplied by the relative weight assigned to each activity (described previously). Total effort factors by fee category, and per licensee in each fee category, are then calculated. These effort factors thus reflect the relative regulatory effort associated with each licensee and fee category.

The effort factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI. - EFFORT FACTORS FOR URANIUM RECOVERY LICENSES

<u>Fee Category</u>	<u>Number of Licensees</u>	<u>Effort Factor Per Licensee</u>	<u>Total Effort Factor</u>	
			<u>Value</u>	<u>Percent</u>
			<u>Total</u>	
Class I (conventional mills)	1	75	75	18
Class II (solution mining)	3	75	225	54
11e.(2) disposal	0	0	0	0
11e.(2) disposal incidental to existing tailings sites	1	75	75	18
Uranium water treatment	1	45	45	11

Applying these factors to the approximately \$200,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the following proposed annual fees for FY 2007:

TABLE XII. - ANNUAL FEES FOR URANIUM RECOVERY LICENSEES (other than DOE)

<u>Facility type</u>	<u>FY 2007 annual fee</u>
Class I (conventional mills)	\$35,700
Class II (solution mining)	35,700
11e.(2) disposal	N/A
11e.(2) disposal incidental	
to existing tailings sites	35,700
Uranium water treatment	21,400

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.

c. Operating Power Reactors.

The approximately \$409.6 million in budgeted costs proposed to be recovered through FY 2007 annual fees assessed to the power reactor class was calculated as shown in Table

XIII. (FY 2006 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 2006 Final</u>	<u>FY 2007</u>
<u>Operating Power Reactors Fee Class</u>		<u>Proposed</u>
Total budgeted resources	\$515.9	\$583.8
Less estimated part 170 receipts	- <u>\$155.2</u>	- <u>\$170.5</u>
Net part 171 resources	\$360.7	\$413.3
Plus allocated transportation	+ \$0.8	+ \$1.1
Plus allocated surcharge	+ \$5.5	- \$5.8
Billing adjustments (including carryover)	+ <u>\$0.2</u>	+ <u>\$1.1</u>
Total required annual fee recovery	\$367.2	\$409.6

The budgeted costs proposed to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in a FY 2007 proposed annual fee of \$3,938,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2007 proposed spent fuel storage/reactor decommissioning annual fee of \$150,000. This results in a total FY 2007 proposed annual fee of \$4,088,000 for each power reactor licensed to operate.

The proposed annual fee for power reactors increases in FY 2007 compared to FY 2006 due to an increase in budgeted resources for a number of activities, including regulatory infrastructure for new reactor licensing activities and preparations for future combined license applications. This increase is partially offset by the exclusion of generic homeland security activities from the fee base and higher estimated part 170 collections. The NRC estimates an increase in part 170 collections of about 10 percent from operating power reactors in FY 2007; these collections offset the required annual fee recovery amount by a total of over \$170.5 million.

The proposed annual fees for power reactors are presented in §171.15. As discussed previously in Section II.B.3, “Codification of Policy Regarding When the Assessment of Annual Fees Begins” of this document, the NRC recently published a proposed rulemaking (“Licenses, Certifications, and Approvals for Nuclear Power Plants,” 71 FR 12782; March 13, 2006) that included a provision that states that a combined license holder does not have to pay an annual fee until the Commission authorizes fuel load and operation.

d. Spent Fuel Storage/Reactor Decommissioning.

For FY 2007, budgeted costs of approximately \$23.7 million for spent fuel storage/reactor decommissioning are proposed 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 shows the calculation of this annual fee amount. (FY 2006 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 2006 Final</u>	<u>FY 2007</u>
<u>Spent Fuel Storage/Reactor</u>		<u>Proposed</u>
<u>Decommissioning Fee Class</u>		
Total budgeted resources	\$26.6	\$23.7
Less estimated part 170 receipts	- <u>\$5.8</u>	- <u>\$5.2</u>
Net part 171 resources	\$20.8	\$18.5
Plus allocated generic transportation	+ \$0.2	+ \$0.3
Plus allocated surcharge	+ \$0.2	- \$0.3
Billing adjustments (including carryover)	+ <u>\$0.0</u>	+ <u>\$0.0</u>
Total required annual fee recovery	\$21.2	\$18.4

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2007 proposed annual fee of \$150,000 per licensee. The value of total budgeted resources for this fee class decreased in FY 2007 compared to FY 2006 due to a decrease in the budgeted resources for decommissioning activities and the exclusion of generic homeland security activities from the fee base.

e. Test and Research Reactors (Non-power Reactors).

Approximately \$369,000 in budgeted costs is proposed to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2007. Table XV

summarizes the proposed annual fee calculation for test and research reactors for FY 2007. (FY 2006 values shown for comparison purposes; 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 2006 Final</u>		<u>FY 2007</u>	
<u>Test and Research Reactors Fee Class</u>			<u>Proposed</u>	
Total budgeted resources		\$0.88		\$0.85
Less estimated part 170 receipts	-	<u>\$0.57</u>	-	<u>\$0.48</u>
Net part 171 resources		\$0.31		\$0.37
Plus allocated generic transportation	+	\$0.01	+	\$0.01
Plus allocated surcharge	+	\$0.01	-	\$0.01
Billing adjustments (including carryover)	-	<u>\$0.00</u>	+	<u>\$0.00</u>
Total required annual fee recovery		\$0.32		\$0.37

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 2007 proposed annual fee of \$92,300 for each licensee. The increase in annual fees from FY 2006 to FY 2007 is due to lower part 170 revenue estimates. The FY 2007 part 170 revenue estimate is based on the last year of invoices for this fee class, adjusted for changes in budgeted resources.

f. Rare Earth Facilities.

The FY 2007 budgeted costs of \$89,300 for rare earth facilities (fee category 2.A.(2)(c) under §171.16) proposed to be recovered through annual fees would be assessed to one licensee who has a specific license for receipt and processing of source material, resulting in a FY 2007 proposed annual fee of \$89,300. Table XVI summarizes the proposed annual fee calculation for the rare earth fee class for FY 2007. (FY 2006 values shown for comparison purposes; 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 2006 Final</u>	<u>FY 2007</u>
<u>Rare Earth Fee Class</u>		<u>Proposed</u>
Total budgeted resources	\$0.831	\$0.101
Less estimated part 170 receipts	- \$0.740	- \$0.010
Net part 171 resources	\$0.091	\$0.091
Plus allocated generic transportation	+ N/A	+ N/A
Plus allocated surcharge	+ \$0.005	- \$0.001
Billing adjustments (including carryover)	+ \$0.000	+ \$0.000
Total required annual fee recovery	\$0.096	\$0.089

The total allocated resources for this fee class decreased in FY 2007 compared to FY 2006, primarily due to a decrease in budgeted resources for licensing activities.

g. Materials Users.

Table XVII shows the calculation of the FY 2007 proposed annual fee amount for materials users licensees. (FY 2006 values shown for comparison purposes; individual values may not sum to totals due to rounding.) Note the following fee categories under §171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. - 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17.

TABLE XVII. - ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS
[Dollars in millions]

<u>Summary Fee Calculations/Materials Users</u>	<u>FY 2006 Final</u>	<u>FY 2007</u>
<u>Fee Class</u>		<u>Proposed</u>
Total budgeted resources	\$30.3	\$25.6
Less estimated part 170 receipts	- <u>\$2.0</u>	- <u>\$1.4</u>
Net part 171 resources	\$28.2	\$24.2
Plus allocated generic transportation	+ \$0.6	+ \$1.0
Plus allocated surcharge	+ \$0.8	+ \$0.3
Billing adjustments (including carryover)	+ <u>\$0.0</u>	+ <u>\$0.0</u>
Total required annual fee recovery	\$29.6	\$25.5

The total required annual fees proposed to be recovered from materials licensees decreased in FY 2007 mainly because of the exclusion of generic homeland security activities from the fee base, as well as decreases in the budgeted resources allocated to this fee class for activities such as decommissioning and materials information technology.

To equitably and fairly allocate the \$25.5 million in FY 2007 budgeted costs to be recovered in annual fees assessed to the approximately 4,400 billable diverse materials users licensees, the NRC is proposing to continue 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. This proposed 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 proposed annual fee for these categories of materials users licenses would be developed as follows:

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

The constant is the multiple necessary to recover approximately \$17.9 million in general costs (including allocated generic transportation costs) and is 0.93 for FY 2007. The inspection multiplier is the multiple necessary to recover approximately \$7.1 million in inspection costs, and is 1.54 for FY 2007. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2007, approximately \$155,000 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 proposed to be assessed to each licensee also includes a share of the \$309,000 in fee relief allocated to the materials users fee class (see Section II.B.2, “Application of ‘Fee Relief’/Surcharge Changes” of this document), and for certain categories of these licensees, a share of the approximately \$620,000 in LLW surcharge costs allocated to the fee class.

The annual fee for each fee category is shown in §171.16(d). Annual fees for most fee categories within the materials users fee class decrease, while some increase or remain the same. As indicated previously, changes in the FY 2007 proposed annual fees for categories of licensees within the materials users fee class reflect not only changes in the budgeted resources supporting this fee class, but also changes in the estimates of average professional staff time for materials users license applications and inspections, derived from the biennial review performed for the FY 2007 fee rule (see discussion of the biennial review under Section II.A.2, “Flat Application Fee Changes” of this document). Accordingly, the relatively large percentage decrease in the proposed annual fee for fee category 3.H under §171.16 is the result of a significant decrease to the average professional staff time estimates.

h. Transportation.

Table XVIII shows the calculation of the FY 2007 generic transportation budgeted resources proposed to be recovered through annual fees. (FY 2006 values shown for comparison purposes.)

TABLE XVIII. - ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

<u>Summary Fee Calculations/Transportation</u>	<u>FY 2006 Final</u>	<u>FY 2007</u>
<u>Fee Class</u>		<u>Proposed</u>
Total budgeted resources	\$6.3	\$4.9
Less estimated part 170 receipts	- <u>\$1.2</u>	- <u>\$0.8</u>
Net part 171 resources (required annual fee recovery)	\$5.1	\$4.1

The total FY 2007 budgeted resources for generic transportation activities, including those to support DOE Certificate of Compliance (CoCs), is \$4.1 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).] The budgeted resources for these activities decreased from FY 2006 to FY 2007 mostly due to the removal of generic homeland security activities from the fee base.

Consistent with the policy established in the NRC's FY 2006 final fee rule, the NRC is proposing to recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. NRC is proposing to continue to assess a separate annual fee under §171.16, fee category 18.A., for DOE transportation activities.

These resources are proposed to be 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. 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.

The proposed distribution of these resources to the license fee classes and DOE is shown in Table XIX (individual values may not sum to totals due to rounding). The distribution is adjusted to account for the licensees in each fee class that are fee exempt. [For example, if three CoCs benefit the entire test and research reactor class, but only four of 30 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 $((4/30)*3)$, or 0.4 CoCs.]

TABLE XIX. - DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2007

[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	131	100	\$4.08
DOE	35	26.8	\$1.09
Operating Power Reactors	36	27.5	\$1.12
Spent Fuel Storage/Reactor	9	6.9	\$0.28
Decommissioning			
Test and Research Reactors	0.4	0.3	\$0.01
Fuel Facilities	19	14.5	\$0.59
Materials Users	31.4	24	\$0.98

The NRC is proposing to continue to assess DOE an annual fee based on the part 71 CoCs it holds, and not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's proposed annual fee includes a reduction for the fee relief (see Section II.B.2 of this document), resulting in a total proposed annual fee of \$1,066,000 for FY 2007. This fee decreases from last year primarily due to exclusion of homeland security activities from the fee base.

5. Prorating Annual Fees.

The NRC is proposing to revise the annual fee proration provisions for certain materials licenses. Section 171.17(b) currently states that new licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY, and that new licenses issued from October 1 to March 31 will be assessed one-half the annual fee for that FY. As explained in §171.17(b), similar proration provisions also apply to applications for license terminations and requests for downgraded licenses.

The NRC is proposing to revise the annual fee proration provisions for new licenses, license terminations, and downgraded licenses, for all materials licensees subject to an annual fee of \$100,000 or more for a single fee category. For these licenses, annual fees for new, terminated, or downgraded licenses would be based on the number of days in the FY the license was in effect. This is consistent with the proration provisions for reactors and part 72 licensees who do not hold part 50 licenses, as established in §171.17(a). The NRC is proposing this change because it believes it is more fair to prorate all fees over \$100,000 in the

same manner, regardless of whether the fee is associated with a power reactor, part 72 licensee, or materials licensee.

6. New Fee Categories.

As discussed in Sections II.A.3, “New Fee Categories, ” and III.B.4.b, “Uranium Recovery Facilities” of this document, the NRC is proposing to amend §171.16 to establish a new fee category (2.A.(5)) for uranium water treatment facilities. The NRC recently received an application for this type of license, which was unique to the NRC and therefore not covered by existing materials users fee categories.

Also as discussed in Section II.A.3 of this document, the NRC is proposing to update the fee amounts for some new and revised proposed fee categories that were included in another NRC rulemaking, “Requirements for Expanded Definition of Byproduct Material” (71 FR 42952; July 28, 2006). Section II.A.3 includes both the FY 2007 proposed part 170 and part 171 fees for these new and revised fee categories, as well as the explanation for the need for these new fee categories.

Fees associated with the new and revised fee categories for the expanded definition of byproduct material will not be applicable until the effective date of the FY 2007 final fee rule (approximately early August 2007), or the effective date of the NRC’s final rule on the expanded definition of byproduct material, whichever is later. FY 2007 fees will be applicable to those new fee categories as of that date. As mentioned previously, these fee amounts will be updated each year.

Note the specific application and inspection hours used in the part 170 and 171 fees for all categories of materials users licensees are included in the publicly available workpapers supporting this rulemaking. The calculation method used to determine materials users annual fees is explained in Section II.B.4.g of this document.

7. Administrative Amendments.

The NRC is proposing to modify §171.15(b)(2)(iii) to clarify that the types of activities included in the power reactor annual fees include generic activities for new reactors. This is not a policy change, but rather a clarification of existing policy. Further, the NRC is proposing to revise §171.15(d)(1)(iii) to eliminate reference to Federal agency activities being included in the surcharge, because these activities are now recovered through part 170 fees to Federal agencies or included in other surcharge categories. Additionally, the NRC is proposing to modify the last sentence of footnote 1 under §171.16 to clarify that licensees paying fees under categories 1.A. and 1.E. are not subject to fees under categories 1.C. and 1.D. for sealed sources authorized in the same license. This is to enhance the consistency of this footnote to a similar footnote in §170.31 (footnote 4). Finally, fee category 1.A.(2)(c) would be modified to state that it includes all 'other' licenses for fuel cycle activities under 1.A.(2), including hot cell facilities, consistent with this same proposed change for fee category 1.A.(2)(c) under part 170.

In summary, the NRC is proposing to --

1. Remove generic homeland security resources from the fee base, beginning in FY 2007, to comply with the Energy Policy Act of 2005;

2. Use the NRC's fee relief to all licensees' annual fees, based on their percent of the NRC budget, and make changes to certain surcharge categories;
3. Modify §§171.3 and 171.16 to codify its policy regarding when the assessment of annual fees begins;
4. Establish rebaselined annual fees for FY 2007;
5. Revise the annual fee proration provisions for new, terminated, and downgraded materials licenses;
6. Establish some new fee categories to cover new NRC activities; and
7. Make certain administrative changes for purposes of clarification and consistency.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading "ADDRESSES" above.

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 rule, the NRC is proposing to amend 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 2007 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 proposed 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 proposed 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 proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed under 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, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amounts appropriated for the NWF, by assessing fees. To address fairness and equity concerns related to charging NRC license holders for costs that do not provide a direct benefit to the licensee, OBRA-90 was amended to reduce the NRC's required fee recovery each year beginning in FY 2001 until the required fee recovery was 90 percent. The 90 percent requirement became permanent under the Energy Policy Act of 2005. As a result, the NRC is required to recover approximately 90

percent of its FY 2007 budget authority (less the amounts appropriated from the NWF, and for WIR and generic homeland security activities) through fees. To comply with this statutory requirement and in accordance with §171.13, the NRC is publishing the amount of the FY 2007 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 2007 budget of \$816.6 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program, and for WIR and generic homeland security 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 OBRA-90, as amended, to recover approximately 90 percent of its FY 2007 budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedule of fees that are necessary to implement the Congressional mandate for FY 2007. This rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. A draft Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2007.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is therefore not required. The backfit analysis is not

required because the proposed amendments do not require the modification of, or additions to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

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

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

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

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

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

Authority: Sec. 9701, Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101-576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109-58, 119 Stat. 783, (42 U.S.C. 2201(w)).

2. In §170.3, the definitions of *Advanced reactor*, *Indian organization*, and *Indian tribe* are removed, and the definition of *Special projects* is revised as follows:

§170.3 Definitions.

* * * * *

Special projects means any specific service provided by the Commission for which fees are not otherwise specified in this chapter. This includes, but is not limited to, contested hearings on licensing actions directly related to U.S. Government national security initiatives (as determined by the NRC), topical report reviews, early site reviews, waste solidification activities, 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 10 CFR 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 activities otherwise exempt from fees under this part. It also 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 §170.12, paragraphs (d)(1) and (d)(2) are revised as follows:

§170.12 Payment of Fees.

* * * * *

(d) * * *

(1) All special projects performed by the Commission, unless otherwise exempt from fees or for which fees are otherwise specified in this part, will be assessed fees to recover the full cost of the service provided. Special projects means any specific service provided by the Commission, including but not limited to—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the special project is completed. Each bill will identify the special project, including any documents submitted for review or the specific contested hearing, and the related costs. The fees are payable upon notification by the Commission.

* * * * *

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, 10 CFR 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 professional staff-hour rate of \$256 per hour.

5. In §170.21, in the table, fee category F is removed and reserved, and fee categories A, C, D, G, and K, and footnote 1, are revised to read as follows:

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

* * * * *

SCHEDULE OF FACILITY FEES

(See footnotes at end of table)

Facility categories and type of fees	Fees ^{1,2}
A. Nuclear Power Reactors	
Application for Construction Permit	Full Cost.
Early Site Permit, Construction Permit, Combined License, Operating License	Full Cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	Full Cost.
Inspections ³	Full Cost.

C. Test Facility/Research Reactor/Critical Facility	
Application for Construction Permit	Full Cost.
Construction Permit, Operating License	Full Cost.
Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals	Full Cost.
Inspections ³	Full Cost.

D. Manufacturing License

Application for Construction Permit	Full Cost.
Preliminary Design Approval, Final Design Approval	Full Cost.
Amendment, Renewal, Other Approvals	Full Cost.
Inspections ³	Full Cost.

* * * * *

F. [Reserved]

G. Other Production and Utilization Facility

Application for Construction Permit	Full Cost.
Construction Permit, Operating License	Full Cost.
Amendment, Renewal, Other Approvals	Full Cost.
Inspections ³	Full Cost.

* * * * *

K. Import and export licenses:

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

1. Application for import or export of 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; or license exemption request \$16,600.

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; or license exemption request \$9,700.

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

Application – new license, or amendment; or license exemption request \$4,100.

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; or license exemption request \$2,600.

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

Minor amendment to license \$770.

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.

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.

³ Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

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

6. In §170.31, the table and footnotes 1(b) and 1(c) are revised to read as follows:

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

* * * * *

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) Others, including 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 \$1,200.

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 under Category 1.A.⁴

Application \$2,400.

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 facilities Full Cost.
- (b) Class II facilities Full Cost.
- (c) Other facilities 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 2.A.(2) or Category 2.A.(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 2.A.(2). Full Cost.

(5) Licenses that authorize the possession of source
material related to removal of contaminants
(source material) from drinking water. Full Cost.

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

Application \$280.

C. All other source material licenses.

Application \$10,000.

3. Byproduct material.

A. Licenses of broad scope for the possession and use of byproduct
material issued under parts 30 and 33 of this chapter for
processing or manufacturing of items containing byproduct
material for commercial distribution.

Application \$12,000.

- 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 \$4,500.

- C. Licenses issued under §§32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4). These licenses are covered by fee Category 3.D.

Application \$8,000.

- 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 \$4,300.

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 \$2,900.

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 \$6,000.

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 \$14,300.

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 \$10,500.

I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.

Application \$10,400.

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 \$1,800.

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 \$1,000.

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 \$10,000.

- M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.

Application \$3,600.

- N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.

Application \$6,500.

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

Application \$4,900.

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

Application \$1,400.

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

Registration \$320.

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 \$3,100.

- 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 \$4,600.

5. Well logging.

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

Application \$1,700.

- 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 \$20,400.

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.

Application \$11,200.

- 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.

Application \$8,000.

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.

Application \$2,400.

8. Civil defense.

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

Application \$590.

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 \$20,900.

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 \$20,900.

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

Application – each source \$2,900.

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 \$970.

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 \$4,800.

Inspections Full Cost.

2. Users.

Application \$4,800.

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; or license exemption request \$16,600.

- 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; or license exemption request \$9,700.

- 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; or license exemption request \$4,100.

- 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; or license exemption request \$2,600.

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

Minor amendment \$770.

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.).⁶

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; or license exemption request \$16,600.

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

Application – new license, or amendment; or license exemption request \$9,700.

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

Application – new license, or amendment; or license exemption request \$6,100.

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

Application – new license, or amendment; or license exemption request \$5,100.

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; or license exemption request \$16,600.

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

Application – new license, or amendment; or license exemption request \$9,700.

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

Application – new license, or amendment; or license exemption request \$4,600.

Category 1 Imports

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

Application – new license, or amendment; or license exemption
request \$4,900.

N. Application for the import of Category 1 material.

Application – new license, or amendment; or license exemption
request \$4,100.

Category 2 Imports

O. Application for the import of Category 2 material.

Application – new license, or amendment; or license exemption
request \$3,600.

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; or license exemption

request. \$5,600.

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

Application – new license, or amendment; or license exemption

request \$4,600.

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 \$770.

16. Reciprocity:

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

Application \$1,500.

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

Application \$23,600.

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 1.C. only.

(b) Licensing fees. Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, pre-application consultations and reviews of other documents submitted to NRC for review, and project manager time for fee categories subject to full cost fees, 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 an export or import 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 9.A. through 9.D.

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 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. 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 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), 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. Section 171.3 is revised to read as follows:

§171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part. Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium enrichment facilities until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license, as required in 10 CFR parts 40 and 70.

9. Section 171.15 is revised to read as follows:

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

(a) Each person holding an operating license for a power, test, or research reactor; each person holding a 10 CFR part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have not spent fuel onsite; and each person holding a 10 CFR part 72 license who does not hold a 10 CFR part 50 or part 52 license shall pay the annual fee for each license held at any time during the Federal fiscal year (FY) in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b)(1) The FY 2007 annual fee for each operating power reactor which must be collected by September 30, 2007, is \$4,088,000.

(2) The FY 2007 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 2007 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2007 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2007 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 or 52 of this chapter, operating the Incident Response Center, new reactor regulatory infrastructure). The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2007 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 \$150,000.

(2) The FY 2007 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 2007 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2007 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 surcharge allocated to annual fees includes the budgeted resources for the activities listed in paragraph (d)(1)(i) of this section, plus the total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, a negative surcharge (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2007 surcharge are as follows:

(i) Low-level waste disposal generic activities;

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

(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, 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., regulatory support for Agreement States, generic decommissioning/reclamation activities for fee classes other than power reactors and spent fuel storage/reactor decommissioning, the in-situ leach rulemaking, activities for unregistered general licensees).

(2) The total FY 2007 surcharge allocated to the operating power reactor class of licenses is -\$5.8 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2007 operating power reactor surcharge to be assessed to each operating power reactor is approximately -\$56,000. This amount is calculated by dividing the total operating power reactor surcharge (-\$5.8 million) by the number of operating power reactors (104).

(3) The FY 2007 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is -\$344,000. The FY 2007 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 -\$2,800. 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 2007 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	\$92,300.
Test reactor	\$92,300.

10. In §171.16, paragraph (a)(2) is redesignated as paragraph (a)(3) and revised, a new paragraph (a)(2) is added, and paragraphs (c) and (d) are revised, and paragraph (e) is added 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.

(a) * * *

(2) Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium enrichment facilities until after the Commission verifies through inspection

that the facility has been constructed in accordance with the requirements of the license, as required in 10 CFR parts 40 and 70.

(3) In accordance with §171.17, each person identified in paragraph (a)(1) of this section shall pay the applicable annual fee for each license the person holds during the FY. Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the FY as provided in § 171.17. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If a person holds more than one license, the total annual fee assessed will be the cumulative total of the annual fees applicable to each license held.

* * * * *

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

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

in Manufacturing and Small
Not-For-Profit Organizations
(Gross Annual Receipts)

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

Manufacturing entities that
have an average of 500
employees or less

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

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

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

Educational Institutions that
are not State or Publicly
Supported, and have 500 Employees
or Less

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

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

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

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

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

(d) The FY 2007 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2007 surcharge are shown for convenience in paragraph (e) of this section. The FY 2007 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)	\$4,451,000.

(b) Low Enriched Uranium in
 Dispersible Form Used for
 Fabrication of Power Reactor
 Fuel \$1,345,000.

(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 \$510,000.
 (b) Gas centrifuge enrichment demonstration facilities \$835,000.
 (c) Others, including hot cell facilities \$371,000.

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 \$2,100.

D. All other special nuclear material

licenses, except licenses authorizing
special nuclear material in unsealed
form in combination that would constitute
a critical quantity, as defined in §150.11
of this chapter, for which the licensee
shall pay the same fees as those for
Category 1.A.(2) \$5,700.

E. Licenses or certificates for the operation

of a uranium enrichment facility \$2,550,000.

2. Source material:

A. (1) Licenses for possession and use of
source material for refining uranium mill
concentrates to uranium hexafluoride \$881,000.

(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 \$35,700.
- (b) Class II facilities⁴ \$35,700.
- (c) Other facilities⁴ \$89,300.

- (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 2.A.(2) or Category 2.A.(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 2.A.(2) \$35,700.

(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water \$21,400.

B. Licenses that authorize only the possession, use and/or installation of source material for shielding \$750.

C. All other source material licenses \$13,100.

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 \$28,800.

B. Other licenses for possession and use of
byproduct material issued under
part 30 of this chapter for processing or
manufacturing of items containing
byproduct material for commercial
distribution. \$8,300.

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 3.D. \$11,800.

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) \$4,000.

F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes \$7,800.

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes \$30,800.

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 \$11,300.

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 \$10,600.

J. Licenses issued under Subpart B
of part 32 of this chapter to distribute

items containing byproduct material
that require sealed source and/or device
review to persons generally licensed
under part 31 of this chapter, except
specific licenses authorizing
redistribution of items that have been
authorized for distribution to persons
generally licensed under part 31 of this
chapter \$2,400.

K. Licenses issued under Subpart B
of part 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 \$1,800.

L. Licenses of broad scope for possession
and use of byproduct material issued

under parts 30 and 33 of this
chapter for research and development
that do not authorize commercial
distribution \$14,800.

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 \$5,600.

N. Licenses that authorize services for
other licensees, except: (1) Licenses that authorize
only calibration and/or leak testing services are subject to the
fees specified in fee Category 3.P.; and (2) Licenses
that authorize waste disposal services are subject
to the fees specified in fee categories 4.A., 4.B., and 4.C. \$8,300.

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 \$14,100.

P. All other specific byproduct material

licenses, except those in Categories 4.A.

through 9.D. \$2,700.

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 \$11,700.

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 \$9,100.

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 \$4,300.

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 \$26,400.

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 \$13,500.

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 \$28,800.

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 \$4,800.

- 8. Civil defense:
 - A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities \$2,100.

- 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 \$19,100.

 - 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 \$19,100.

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 \$2,700.

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 \$900.

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/A¹²

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, 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	\$278,000.
18.	Department of Energy:	
	A. Certificates of Compliance	\$1,066,000. ¹⁰
	B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	\$657,000.

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 FY. 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 FY and for new licenses issued during the FY 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 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. 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 FY, 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 7.B. or 7.C.

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

¹¹ See §171.15(c).

¹² See §171.15(c).

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

(e) The surcharge allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative surcharge (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2007 surcharge are as follows:

(1) Low-level waste disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program); and

(3) 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, 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., regulatory support for Agreement States, generic decommissioning/reclamation activities for fee classes other than power reactors and spent fuel storage/reactor decommissioning, the in-situ leach rulemaking, and activities for unregistered general licensees).

11. Section 171.17 is revised to read as follows:

§171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors, 10 CFR part 72 licensees who do not hold 10 CFR part 50 licenses, and materials licenses with annual fees of \$100,000 or greater for a single fee category.

(1) *New licenses.* The annual fees for new licenses for power reactors, non-power reactors, 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license, and materials licenses with annual fees of \$100,000 or greater for a single fee category for the current FY, that are subject to fees under this part and are granted a license to operate on or after October

1 of a FY, are prorated on the basis of the number of days remaining in the FY. Thereafter, the full annual fee is due and payable each subsequent FY.

(2) *Terminations.* The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the FY will be prorated on the basis of the number of days remaining in the FY after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license who request termination of the 10 CFR part 72 license and permanently cease activities authorized by the license during the FY based on the number of days the license was in effect before receipt of the termination request. The annual fee for materials licenses with annual fees of \$100,000 or greater for a single fee category for the current FY will be prorated based on the number of days remaining in the FY when a termination request or a request for a POL is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period.

(3) *Downgrades.* The annual fee for a materials license with an annual fee of \$100,000 or greater for a single fee category for the current FY, that is subject to fees under this part and

downgraded on or after October 1 of a FY, is prorated upon request by the licensee on the basis of the number of days remaining in the FY when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(b) Materials licenses (excluding 10 CFR part 72 licenses and materials license with annual fees of \$100,000 or greater for a single fee category, included in § 171.17(a)).

(1) *New licenses.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY.

(2) *Terminations.* The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY.

Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(3) *Downgraded licenses.*

(i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

12. In §171.19 paragraph (d) is revised to read as follows:

§171.19 Payment.

* * * * *

(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 1.C., 1.D., 2.A.(2) through 2.A.(5), 2.B., 2.C., and 3.A. through 9.D.

* * * * *

Dated at Rockville, Maryland, this 25th day of January 2007.

For the Nuclear Regulatory Commission.

/RA/

Jesse L. Funches,

Chief Financial Officer.

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS PROPOSED RULE --
DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE PROPOSED
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 proposed rule are based on the NRC's size standards.

The NRC is required each year, under OBRA-90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. The total amount NRC is required to recover in fees for FY 2007 is approximately \$664.9 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 FY.

The Commission is proposing to rebaseline its part 171 annual fees in FY 2007. Rebaselining fees results in increased annual fees compared to FY 2006 for two classes of licenses (power reactors and non-power reactors), and decreased annual fees for five classes of licenses (spent fuel storage/reactor decommissioning, fuel facilities, uranium recovery, rare earth, and transportation). For the materials users fee class, annual fees decrease for most of the categories (sub-classes) of licenses, while annual fees for some categories increase or remain the same.

The Congressional Review Act of 1996 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 Small Business Regulatory Enforcement Fairness 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 2007 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 fees on materials licensees. In FY 2006, about 31 percent of these licensees (approximately 1,300 licensees) qualified as small entities.

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.

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 performed a similar review, and reached the same conclusion, in FY 2005.

The NRC has again re-examined its small entity fees for the FY 2007 fee rulemaking, and does not believe that a change to the small entity fees was warranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover all of 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 2007, 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.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC recently received one comment requesting that such small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (i.e., they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities under part 170, in addition to the part 171 small entity fee reduction. Regarding export licenses, in particular, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC's fees are charged per application, this streamlining process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities.

Therefore, the NRC is proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2007. The NRC is not proposing to establish a small entity fee under part 170. The NRC plans to re-examine the small entity fees again in FY 2009.

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 2007.

U. S. Nuclear Regulatory Commission

Small Entity Compliance Guide

Fiscal Year 2007

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Introduction

The Small Business Regulatory Enforcement Fairness Act 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 Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2007 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 2007 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 "Who We Are", then "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

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.

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.

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:

	<u>Maximum annual fee</u>
	<u>per licensed</u>
	<u>category</u>
<u>Small business not engaged</u>	
<u>in manufacturing and small</u>	
<u>not-for-profit organizations</u>	
<u>(Gross Annual Receipts)</u>	
\$350,000 to \$5 million	\$2,300.
Less than \$350,000	\$500.
<u>Manufacturing entities that</u>	
<u>have an average of 500</u>	
<u>employees or less</u>	

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. Complete all items on NRC Form 526 as follows: (NOTE: Incomplete or improperly completed forms will be returned as unacceptable.)
 - Enter the license number and invoice number exactly as they appear on the annual fee invoice.
 - Enter the North American Industry Classification System (NAICS) code if it is known. If it is not known, leave this item blank.
 - Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for billing purposes on the payment copy of the invoice -- include contact's name, telephone number, e-mail address, and company web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.
 - Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:
 - a. A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity

of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business (67 CFR 59).

- b. Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources, regardless of the form of the revenue and not solely receipts from licensed activities.
- c. NRC's size standards on small entity are based on the Small Business Administration's regulations (13 CFR 121).
- d. The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

- 2. If the invoice states the "Amount Billed Represents 50% Proration," the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either \$1,150 or \$250) for each category billed.
- 3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small

entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee payment and the "Payment Copy" of the invoice to the address shown on the invoice.

5. 10 CFR 171.16(c)(3) states licensees shall submit a new certification with its annual fee payment each year. Failure to submit NRC Form 526 at the time the annual fee is paid will require the licensee to pay the full amount of the invoice.

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."

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.

license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C., 1.D., 2.A.(2) through 2.A.(5), 2.B., 2.C., and 3.A. through 9.D.

* * * * *

Dated at Rockville, Maryland, this 25th day of January 2007.

For the Nuclear Regulatory Commission.

/RA/

 Jesse L. Funches,
 Chief Financial Officer.

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OFFICE	OGC		FSME		NSIR		OIP		NRO		NRR	
NAME	T. Rothschild*		C. Miller*		R. Zimmerman*		J. Lee*		R. Borchardt*		J. Dyer*	
DATE	1/16 /07		1/16/07		1/16/07		1/10/07		1/16/07		1/16/07	

OFFICE	RES		NMSS		DCFO	N	EDO		CFO	N
NAME	B. Sheron*		J. Strosnider *		P. Rabideau		L. Reyes*		J. Funches /RA/	
DATE	1 /12/07		1/16/07		01/24/07		1/ 22/07		01/25/07	