

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AI93

NRC-2011-0016

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2011

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2011, not including amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. Based on the Department of Defense and Full-Year Continuing Appropriations Act, 2011, signed by the President on April 15, 2011, the NRC's required fee recovery amount for the FY 2011 budget is approximately \$915.8 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately \$916.2 million.

DATES: Effective Date: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: You can access publicly available documents related to this final rule using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the 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's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.
- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID **NRC-2011-0016**. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Rebecca Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; telephone: 301-415-7126, e-mail: Rebecca.Erickson@NRC.gov.

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I. Background

The NRC is required each year, under OBRA-90 (42 U.S.C. 2214), as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The NRC receives 10 percent of its budget authority (not including non-fee items) from the general fund each year to pay for the cost of agency activities that do not provide a direct benefit to NRC

licensees, such as international assistance and Agreement State activities (as defined 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. First, user fees, presented in Title 10 of the *Code of Federal Regulations* (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 cost of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR Part 171 under the authority of OBRA-90, recover generic regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

In accordance with OBRA-90, \$26 million of the agency's budgeted resources for generic homeland security activities are excluded from the NRC's fee base in FY 2011. These funds cover generic activities such as rulemakings, development of guidance documents that support entire license fee classes or classes of licensees, and major information technology systems that support tracking of source materials. Under its IOAA authority, the NRC will continue to charge Part 170 fees for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.

On April 15, 2011, the President signed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10). In the Act, as adjusted by the rescission discussed in Section 1119(a), Congress appropriated \$1,054.1 million to the NRC to carry out its mission in FY 2011. This is \$0.5 million more than the amount used to develop the FY 2011 proposed rule (76 FR 14748; March 17, 2011). The total amount NRC is required to recover in fees for FY 2011 is approximately \$915.8 million, which is increased by approximately \$0.4 million to account for billing adjustments (i.e. expected unpaid invoices, payments for prior year invoices), resulting in a total of approximately \$916.2 million to be billed as fees in FY 2011.

The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. In FY 2011, the NRC's total fee recovery amount has increased by \$3.6 million from FY 2010. The FY 2011 budget supports activities associated with the safe and secure operations of civilian nuclear power reactors, research and test reactors, various fuel facilities, use of nuclear materials, and storage and transportation of spent nuclear fuel. The FY 2011 budget was allocated to the fee classes that the budget activities support. The annual fees for power reactors and uranium recovery facilities have decreased while fees for spent fuel storage facilities, nonpower reactors, fuel facilities, most materials users, and Department of Energy's (DOE) uranium recovery and transportation activities have increased. Another factor affecting the amount of annual fees for each fee class is the estimated collection under Part 170, discussed in Section III, "Final Action," of this document.

II. Response to Comments.

The NRC published the FY 2011 proposed fee rule on March 17, 2011 (76 FR 14748) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. By the close of the comment period (April 18, 2011), the NRC received seven comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Specific Part 170 Issues.

1. Hourly Rate Increase.

Comment. Several commenters were opposed to the increase in the NRC's hourly rate. One commenter requested further explanation for the increase in agency corporate support and Inspector General (IG) recoverable budgeted resources, which he attributed to the main reason

for the hourly rate increase. Some commenters noted that NRC's hourly rate greatly exceeds the rate charged by industry consultants and the 5.4 percent hourly rate increase exceeds the current rate of inflation.

Response. The NRC's hourly rate is based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. In response to the comment attributing the hourly rate increase to the increase for agency corporate support and IG recoverable budgeted resources, as discussed in the proposed rule, in FY 2011 the NRC revised its budget structure. This new structure allows the agency to accurately identify all of its direct, indirect, and overhead costs. The increase for agency corporate support budgeted resources was offset by the decrease in budgeted resources for mission indirect program support, which is shown in Section III.A.1. Table II, "Hourly Rate Calculation." Consequently, the increase in the hourly rate is due to appropriately capturing the FY 2011 agency overhead budgeted resources, and a small reduction in the number of direct full-time equivalents (FTEs).

In response to comments that the NRC hourly rate increase exceeds the current rate of inflation and the rate is higher than private industry rates, the NRC's rate is calculated to recover all of the budgeted costs supporting the services provided under Part 170, including all programmatic and agency overhead, which is consistent with the full cost recovery concept emphasized in Office of Management and Budget Circular No. A-25, "User Charges." The NRC did not receive any comments suggesting ways to revise its hourly rate calculation methodology, and comments on previous rulemakings have consistently supported the NRC's efforts to collect more of its budget through Part 170 fees-for-services rather than Part 171 annual fees. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2011 proposed rule.

2. Multiple Hourly Rates.

Comment. One commenter requested that the NRC consider developing different hourly

rates to account for more complex licensing tasks (and corresponding allocation of NRC staff resources) and that commercial operators bear a greater portion of the fee recovery burden.

Response. The NRC has considered comments in previous fee rulemakings on multiple hourly rates. In the FY 1995 fee rule (60 FR 32218; June 20, 1995), the NRC replaced the one agency-wide professional hourly rate with two hourly rates based on "cost center concepts" used for budgeting purposes to separately, and more equitably, allocate the costs associated with the reactor and materials programs. In the FY 2007 fee rule (72 FR 31402; June 6, 2007), the NRC returned to the use of one hourly rate because there was no longer a significant difference in the two hourly rates. Further, the additional burden required to develop and provide annual review and oversight of a multiple hourly rate schedule that takes into account the complexity of a task would likely increase overhead costs, and thus be counterproductive. Therefore, the NRC is retaining the single hourly rate as presented in the FY 2011 proposed rule.

3. Flat Rates.

Comment. Some commenters recommended implementing a schedule of costs using flat fees for common tasks for uranium recovery licensees. The commenters believe that flat rates would assist the industry in preparing their annual budgets and better anticipate costs.

Response. Part 170 "flat" license fees are fees charged for most material and import/export license applications and amendments. These fees are based on the average direct hours required to process the application or amendment, multiplied by the professional hourly rate established annually in Part 170. The average processing time is determined through a biennial review of actual hours associated with processing these applications or amendments. The NRC has considered the commenters' recommendation to include common tasks for uranium recovery licensees in the Part 170 "flat" license fees. Based on past experience, the NRC believes there would be a very limited number of licensing activities that

would qualify for an average cost method. In addition, a “flat” rate would still need to be adjusted annually to reflect any change to the NRC’s professional hourly rate. Thus, the NRC believes the implementation and oversight costs associated with “flat” fees for uranium recovery tasks would outweigh any potential benefit to NRC licensees. Therefore, the NRC is not considering the addition of any Part 170 “flat” license fees in this final fee rule.

4. Improving Uranium Recovery Licensing Process.

Comment. Some commenters stated that the NRC is invoicing excessive hourly charges to uranium recovery licensees. These commenters asserted that the excessive hourly charges could be eliminated by improving the NRC licensing process. One commenter representing current and prospective uranium recovery fee class licensees called for a revision to the proposed rule to require more efficient processing of services subject to hourly fees.

Response. NRC understands that costs for processing a license for new facilities can be expensive. However, the staff has attempted to minimize the impact of Part 170 fees on applicants and licensees. For example, when new personnel are assigned to a license review, time will not be charged to an applicant or licensee until the staff has become familiar with the project. In addition, licensees are not charged for inspections during the period new uranium recovery employees are being trained. Although inefficiencies have occurred during past reviews, the staff is cognizant of the charges billed to applicants and licensees and attempts to use its time wisely.

Furthermore, in an effort to minimize review time, the NRC staff has increased its efforts to communicate licensing requirements for application submittals. For example, the staff has held or participated in at least 2 workshops each year since 2007, the latest of which was held in January 2011. The staff has also recently participated in a focus group meeting designed to resolve global issues and ultimately reduce application review time. Despite these outreach efforts, some uranium recovery applicants have provided applications or responses to requests

for additional information that have been insufficient and resulted in longer review times and higher fees. Applicants can reduce their costs by providing complete and well-organized applications that enable reviewers to easily perform the required analyses.

Finally, the NRC has begun to revise its guidance documents in order to assist applicants prepare better applications, and will continue efforts to ensure that the staff carries out its statutory obligations in an efficient manner. However, the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule because the NRC's budget and the manner in which the staff carries out its activities are outside the scope of this rulemaking.

5. Lack of Invoice Detail.

Comment: Some commenters representing themselves or current and prospective uranium recovery licensees asserted that the NRC's invoices consistently lack sufficient detail to allow the licensee to determine the precise nature of the work being invoiced.

Response. As stated in the past, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under Part 170. The NRC has specific policies and procedures in place for NRC staff to follow when recording time in the Human Resources Management System (HRMS), the agency's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From HRMS, the fee billing system captures the NRC staff hours for activities billable under Part 170 as well as work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the initials of the staff member performing the work, and the date the work performed or completed are printed on the enclosure to the Part 170 invoices. Additionally, the inspection report number is provided on inspection fee bills. The work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in

HRMS. Thus, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts.

For contractor costs billed to uranium recovery licensees under Part 170, the NRC includes copies of the contractor's summary cost reports with the invoices. Upon specific request, the NRC will send all available information in support of the bill to any licensee or applicant who does not understand the charges or needs more information in order to understand the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

When practicable the NRC has improved the invoicing process. For example, as announced in the March 17, 2011, proposed rule, the NRC has started billing the licensee for any inspection cost incurred during the quarter, even if the inspection is ongoing. Billing for incurred inspection costs began in the first quarter of FY 2011, when the NRC's new accounting system was implemented. Comments on previous fee rulemakings and the instant rulemaking have supported this change.

B. Specific Part 171 Issues.

1. Changing NRC's Small Entity Size Standards.

Comment. One commenter stated the annual fees are already excessive for a small healthcare entity and continue to increase. The commenter suggested that the NRC should consider changing the small entity definition so small healthcare entities that have less than 100 employees and a small portion of their activities related to nuclear isotopes can qualify for the small entity fees. The commenter further suggested that the gross-receipts requirement should only include the gross-receipts related to a nuclear activity or that the small business category be based on the number of employees rather than receipts.

Response. The NRC has considered comments in previous fee rulemakings that the

fees for small businesses be based on various factors such as the number of gauges used, the volume of patients administered to, or receipts from the use of regulated activities. The NRC has consistently rejected these alternatives because they would not necessarily meet the goal of the Regulatory Flexibility Act (RFA) to minimize the impact of agency actions on small entities. For example, a large medical establishment would pay a reduced fee if only a small part of its business involved nuclear procedures, whereas a small medical facility whose entire business involves nuclear procedures would pay a larger fee. Basing the fees on the small entity size standards ensures that the benefits of reduced fees apply only to small entities. The NRC's receipts-based size standard for small business not engaged in manufacturing is based on the most commonly used Small Business Administration (SBA) size standard.

The NRC also notes that the purpose of this rule is to amend the fees charged to its applicants and licensees. The size standards used to qualify an NRC licensee as a "small entity" under the RFA are codified in 10 CFR 2.810. Thus, they are beyond the scope of this rule and the commenter's suggestion that the size standards be revised is not being addressed in this final rule. However, the commenter may submit a Petition for Rulemaking to revise the size standards under 10 CFR 2.810. Instructions for submitting a petition can be found at <http://www.nrc.gov/about-nrc/regulatory/rulemaking/petition-rule.html>.

2. Fee-Relief Activities.

Comment. One commenter representing the commercial nuclear energy industry proposed that NRC implement a process of distinguishing between the fee recovery and fee-relief sources of funds so that the user fee is not used as an additional source of funding for appropriated programs or vice versa. The commenter further stated that this would demonstrate that the budget fairly reflects those activities that are licensee-specific. The commenter also proposed that NRC identify the budget resources that will be used to review the impacts of the event at the Fukushima Daiichi plant in Japan upon U.S. power reactors as a fee-

relief activity. *Response.* In response to the commenter's recommendation to distinguish between fee recovery and fee-relief sources, OBRA-90 requires that NRC recover approximately 90 percent of its budget authority from fees that are based on a fair and equitable distribution of costs to its licensees. As part of the annual fee rule process, the NRC determines which costs do not directly benefit current licensees and therefore should be included as fee-relief activities. Several factors, including the current fiscal year budgeted activities, existing law, Commission policy, and the type and number of NRC licenses are used in determining how the budgeted resources are allocated to the various fee-relief activities. The NRC believes the existing methodology for determining fee-relief activities and applying any shortfall or surplus is reasonable and fair. Any changes to the format or structure of the NRC budget submission to OMB are outside the scope of this rulemaking and will not be discussed in this rule.

In response to the commenter's proposal that budget resources used to review the impacts of the event at the Fukushima Daiichi plant upon U.S. power plants be allocated as fee-relief, the NRC resources used to develop lessons learned from the event in Japan benefit the U.S. regulatory program and are considered within the fee base. NRC's resources used to support Japan and the U.S. Embassy in Japan are included in the International fee-relief activity. Therefore, the NRC is retaining the budget allocation as outlined in the proposed rule.

3. Fuel Facilities.

Comment. One commenter requested that the proposed "Scrap/Waste" effort factor for a hot cell facility licensed under fee category 1A(2)(c) be corrected from a moderate to a low level of effort and the annual fee be adjusted accordingly. The commenter asserted that as the only license in this category, the generation of scrap and waste is low for activities in the hot cell facility under Vallecitos license SNM-960 and thus requires a low level effort for NRC safety oversight.

Response. In each category of the annual fee determination, the staff bases its

assessment on the authorized activities under the license. A licensee's operations may not be at the maximum level authorized by the license. SNM-960 (Special Nuclear Materials license) is unique in that the Vallecitos facility has commercial spent (irradiated) fuel. The hazards related to this type of SNM and the potential for waste generated by it require a greater level of regulatory and safety oversight. Therefore, the NRC is retaining the effort/fee determination matrix as outlined in the proposed rule.

Comment. The commenter also requested that the NRC consider whether some portion of the budgeted resources for the regulatory framework for reprocessing be spread over other fee classes where the licensees could benefit from a reprocessing facility.

Response. In accordance with OBRA-90, to the maximum extent practicable, the agency's budget is allocated to the fee classes that the budgeted activities support. As the commenter stated, the NRC is considering establishing the framework for licensing a reprocessing facility as a fuel facility. Thus, the NRC determined the budgeted resources for the regulatory framework activity support the fuel facility fee class. The commenter did not provide sufficient information to the NRC to warrant a change to the budget allocation for this activity. Therefore, the NRC is retaining the budget allocation as outlined in the proposed rule.

4. Agreement State Activities.

Comment. Some commenters expressed concern about the impact on NRC licensees once additional states become Agreement States.

Response. This concern has been largely addressed by legislation. To address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount to 90 percent beginning in FY 2005. In response to concerns about the declining number of NRC licensees as more states become Agreement States, the NRC notes that the fee calculation methodology considers the

percentage of licensees in Agreement States in establishing fees for the materials users fee class. As explained in the proposed fee rule, the budgeted resources providing support to Agreement States or their licensees are included in total fee-relief costs, which are offset by the 10 percent non-fee recoverable funding (fee relief) provided by Congress. For example, if the NRC develops a rule, guidance document, or a tracking system that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the fee-relief activities according to the percentage of licensees in that fee class in Agreement States (e.g., if 85 percent of materials users licensees are in Agreement States, 85 percent of these regulatory infrastructure costs are included in the fee-relief category). To the extent that the 10 percent fee relief is insufficient to cover the total cost of all fee-relief activities, these remaining costs are spread to all licensees based on their percentage of the budget.

C. Other Issues.

1. Proposed Fee Rule Supporting Information.

Comment. One commenter stated that the proposed fee rule did not adequately explain the basis for the Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I budgeted costs. This commenter requests that the NRC provide site-specific budget details in the final rule and supporting documents so the associated NRC fee can be appropriately budgeted and allocated internally. The commenter notes that no detail is provided in the working papers associated with the proposed rule to support the increase in FTE allocation for UMTRCA Title I budgeted costs.

Response. The NRC acknowledges the importance of site-specific information for the commenter's internal needs. However, the annual fees are established to recover the difference between the NRC's total recoverable budgeted costs and the estimated Part 170 collections. Thus, the annual fees are not site-specific but represent the budgeted resources

supporting generic regulatory effort for the fee class. In response to the comment on the detail provided in the work papers, the purpose of this rulemaking is to describe and then solicit and evaluate comments on the allocation of the NRC's budget for fee calculation purposes. The rule and supporting work papers are not intended to justify why the budgeted resources for a given budget activity increased. The allocation of the budget to each fee class and fee-relief category was included in the work papers supporting the proposed rule. The work papers show the total budgeted FTE and contract costs at the product line for each activity. The work papers also provide additional information for some classes of licensees, such as uranium recovery, when additional allocation and calculation detail is required to ensure that the fees are fair and equitable to all licensees within the class. Additionally, the contact listed in the proposed fee rule was available during the public comment period to answer any questions that commenters had on the development of the proposed fees. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to Parts 170 and 171.

2. International Activities Supporting Recovery in Japan

Comment. One commenter representing the commercial nuclear energy industry requested that the NRC seek input from industry stakeholders to the extent that expected licensing actions are impacted, if resources originally designated for domestic activities are ultimately diverted to international activities. In addition, the commenter suggests that if additional funds are needed to support the event at the Fukushima Daiichi plant in Japan, the NRC should request additional appropriation from Congress, rather than imposing an additional surcharge to the industry through the user fee.

Response. The NRC acknowledges the industry stakeholders' concerns regarding possible delays to licensing actions. Nonetheless, the responsibility for work schedules regarding NRC licensing activities is not within the scope of this rulemaking. Therefore the work

schedules are not addressed in this final rule, but are being addressed by the project manager's communication with licensees. In response to the commenter's statement on NRC's appropriation, as stated in an earlier response, the NRC resources used to develop lessons learned from the event in Japan benefit the U.S. regulatory program and are considered within the fee base. The NRC resources used to support Japan are included in the International fee-relief activity. NRC's budget requests to Congress are not within the scope of this rulemaking. Therefore, this final rule does not address the commenter's suggestion regarding the NRC's funding needs.

III. Final Action.

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2011 budget authority less the appropriations for non-fee items. The NRC's total budget authority for FY 2011 is \$1,054.1 million. The non-fee items include \$10 million appropriated from the NWF, \$0.5 million for WIR activities, and \$26 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC will have to recover approximately \$915.8 million in FY 2011 through Part 170 licensing and inspection fees and Part 171 annual fees. The amount required by law to be recovered through fees for FY 2011 is \$3.6 million more than the amount estimated for recovery in FY 2010, an increase of less than 1 percent.

The FY 2011 fee recovery amount is increased by \$0.4 million to account for billing adjustments (i.e., for FY 2011 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2011 for prior year invoices). This leaves approximately \$916.2 million to be billed as fees in FY 2011 through Part 170 licensing and inspection fees and Part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2011. FY 2010 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE I. - BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	<u>FY 2010 Final Rule</u>	<u>FY 2011 Final Rule</u>
Total Budget Authority	\$1,066.9	\$1,054.1
Less Non-Fee Items	<u>-53.3</u>	<u>-36.5</u>
Balance	\$1,013.6	\$1,017.6
Fee Recovery Rate for FY 2011	<u>90%</u>	<u>90%</u>
Total Amount to be Recovered for FY 2011	\$912.2	\$915.8
Part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	2.1	3.0
Less Payments Received in Current Year for Previous Year Invoices (estimated)	<u>-3.2</u>	<u>-2.6</u>
Subtotal	-1.1	0.4
Amount to be Recovered Through Parts 170 and 171 Fees	\$911.1	\$916.2
Less Estimated Part 170 Fees	<u>-357.3</u>	<u>-369.3</u>
Part 171 Fee Collections Required	\$553.8	\$546.9

In this final rule, as compared to the proposed rule, NRC amends fees for power reactors, non-power reactors, uranium recovery facilities, most fuel facilities, some small materials users, and DOE's transportation license. The changes to the annual fees are due to the small increase in the NRC's appropriation as compared to the President's budget amount used in the proposed rule. The appropriation increase resulted in a small increase to the

average FTE rate that is used to calculate the budget allocation to each of the fee classes and fee-relief activities in the final rule. Also, this final rule includes an adjustment in the calculation for the materials users' annual fees to reflect the deletion of fee category 3.D. In addition, this final rule includes a revision to the descriptions of Import and Export fee categories 15.F. and 15.J. The revision is described in Section III.A.2., "Flat" Application Fee Changes, of this document.

The NRC estimates that \$369.3 million will be recovered from Part 170 fees in FY 2011, which is unchanged from the proposed rule estimate. This represents an increase of approximately 1.5 percent as compared to the actual Part 170 collections of \$364 million for FY 2010. The NRC derived the FY 2011 estimate of Part 170 fee collections based on the latest billing data available for each license fee class, with adjustments to account for changes in the NRC's FY 2011 budget, as appropriate. The remaining \$546.9 million is to be recovered through the Part 171 annual fees in FY 2011, which is an increase of less than 1 percent compared to actual Part 171 collections of \$545.6 million for FY 2010. The change for each class of licensees affected is discussed in Section III.B.3. below.

The FY 2011 final fee rule is a "major rule" as defined by the Congressional Review Act of 1996 (5 U.S.C. 801-808). Therefore, the NRC's fee schedules for FY 2011 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 reactor licensees, 10 CFR Part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more, upon publication of the FY 2011 final rule. For these licensees, payment is due on the effective date of the FY 2011 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2011 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 2011 falls before the effective

date of the FY 2011 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2010 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2011 final rule will be billed for the annual fee at the FY 2011 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC currently does not mail the final fee rule to all licensees, but will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Billing Help Desk, Accounts Receivable/Payable Branch, Division of the Controller, Office of the Chief Financial Officer, at 301-415-7554, or e-mail fees.resource@nrc.gov. In addition to publication in the *Federal Register*, the final rule will be available on the Internet at <http://www.regulations.gov>.

The NRC, in conjunction with internal and external stakeholders, reviewed its fee policies for power reactors in anticipation of the receipt of new applications for licensing small and medium sized commercial nuclear reactors. The NRC has prepared a paper for the Commission's information in support of the Nuclear Energy Institute's position to calculate annual fees for each new licensed power reactor as a function of its licensed thermal power rating (Mwt).

The NRC changed its policy with regard to billing inspection costs, as discussed in the FY 2010 final rule (75 FR 34220, 34223; June 16, 2010). Instead of billing a licensee when the inspection is completed, the NRC now bills the licensee for any inspection cost incurred during the quarter even if the inspection is ongoing. Billing for incurred inspection costs began in the first quarter of FY 2011, when the NRC's new accounting system was implemented. This policy change did not require a revision to Part 170.

The NRC is amending 10 CFR Parts 170 and 171 as follows:

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

In FY 2011, the NRC is increasing the hourly rate to recover the full cost of activities under part 170, and using this rate to calculate “flat” application fees.

The NRC is making the following changes:

1. 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 NRC is changing the FY 2011 hourly rate to \$273. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2011 hourly rate is higher than the FY 2010 hourly rate of \$259. The increase in hourly rate is due to higher FY 2011 agency overhead budgeted resources, and a small reduction in the number of direct full-time equivalents (FTEs). In FY 2011 the NRC revised its budget structure. This new structure allows the agency to accurately identify all its direct and overhead costs. Under this new FY 2011 structure, more of the budgeted resources have been identified as overhead costs. The agency is using this information to further streamline its costs and make efficient use of all its resources. The FTEs for direct program activities in the Reactor program decrease in FY 2011. The hourly rate calculation is described in further detail in the following paragraphs.

The NRC’s hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) mission direct program salaries and benefits; (2) mission indirect program support; and (3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The mission direct FTE hours are the product of the mission direct FTE times the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

In FY 2011, the NRC is using 1,371 hours per direct FTE, the same amount as FY 2010, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2011 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. FY 2010 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II. - HOURLY RATE CALCULATION

	<u>FY 2010 Final Rule</u>	<u>FY 2011 Final Rule</u>
Mission Direct Program Salaries & Benefits	\$343.8	\$337.4
Mission Indirect Program Support	\$135.6	\$25.9
Agency Corporate Support, and the IG	<u>\$330.4</u>	<u>\$474.1</u>
Subtotal	\$809.8	\$837.4
Less Offsetting Receipts	<u>-\$0.0</u>	<u>-\$0.0</u>
Total Budget Included in Hourly Rate	\$809.8	\$837.4
Mission Direct FTEs	2,276	2,236
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	\$259	\$273

As shown in Table II, dividing the FY 2011 \$837.4 million budget amount included in the hourly rate by total mission direct FTE hours (2,236 FTE times 1,371 hours) results in an hourly rate of \$273. The hourly rate is rounded to the nearest whole dollar.

2. "Flat" Application Fee Changes.

The NRC is adjusting the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of \$273. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the final professional hourly rate for FY 2011.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officer's Act. The NRC conducted this biennial review for the FY 2011 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data for the FY 2011 fee rule showed that 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 data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2009 final fee rule. Thus, the revised final average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

The higher hourly rate of \$273 is the main reason for the increases in the application fees. Application fees for 10 fee categories (3.G., 3.I., 3.P., 3.R.1., 3.R.2., 4.B., 7.C., 8.A., 9.C., and 9.D. under § 170.31) also increase because of the results of the biennial review, which showed an increase in average time to process these types of license applications. The decrease in fees for 9 fee categories (2.C., 3.B., 3.H., 3.L., 3.M., 3.O., 5.A., 7.A., and 9.A. under § 170.31) is due to a decrease in average time to process these types of applications.

The flat application fee for fee Category 17., Master materials licenses of broad scope issued to Government agencies, is being eliminated. Instead, any application received for fee Category 17. will be reviewed on a full-cost basis; i.e., staff hours required to review application

times the NRC hourly rate. The regulatory effort to review a new master materials license application varies with each license application. Therefore, a full cost application fee would be equitable since the actual cost of review will be charged to the applicant.

Based on the biennial review, the following changes have been made to the fee categories for import and export licenses. The current export fee Category 15.H. is deleted because the description for the fee was incorrect and not used in export licensing. The current fee Category 15.I. is renumbered as 15.H. A new export fee Category 15.I. is established to reflect a new fee category for government-to-government consents for exports of Category 1 quantities for radioactive material listed in Appendix P to 10 CFR Part 110. The new 15.I. fee category reflects the NRC's activity related to obtaining government-to-government consents as specified in § 110.42(e)(3). In addition, fee categories 15.M. through and including 15.Q. are being eliminated since the requirement to obtain a specific license for imports of radioactive materials listed in Appendix P to 10 CFR Part 110 was eliminated as part of a 2010 rule change to 10 CFR Part 110 (75 FR 44072; July 28, 2010). Also, the descriptions for fee categories 15.F. and 15.J. are revised to replace the reference to § 110.42(e)(4) with § 110.40(b)(6)(i) that was added to 10 CFR Part 110 as part of the 2010 rule change to clarify the requirement for Commission level review.

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 minimal. 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.L., 15.R. and 16. of § 170.31. Applications filed on or after the effective date of the FY 2011 final fee rule are subject to the revised fees in the final rule.

In FY 2011, NRC will be eliminating fee Category 3.D. under byproduct materials since the agency does not expect to receive any license under the current definition of this fee category. The fee category will be reserved for future use.

3. Administrative Amendments.

In § 170.11, the NRC is inserting a semicolon at the end of paragraph (a)(1)(iii)(A), inserting a semicolon and the word “and” at the end of paragraph (a)(1)(iii)(B), and removing and reserving paragraph (a)(1)(iii)(D) for ease of reading. There is no change to the NRC’s fee exemption policy.

In § 170.31, the NRC is eliminating footnote 5 and renumbering footnote 6 to 5.

In summary, the NRC is making the following changes to 10 CFR Part 170:

1. Establish a revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the FY 2011 hourly rate and the results of the biennial review of average professional staff hours; revise the fee categories for import and export licenses; eliminate fee category 3.D; and change the application fee from a flat rate to full cost for fee Category 17; and
3. Make certain administrative changes for purposes of improving the clarity of the rule.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

The NRC will use its fee-relief surplus by decreasing all licensees’ annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking also makes changes to the number of NRC licensees and to establish rebaselined annual fees based on Pub. L. 112-10. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge.

The NRC will use its fee-relief surplus by decreasing all licensees' annual fees, based on their percentage share of the budget. The NRC applies the 10 percent of its budget that is excluded from fee recovery under OBRA-90, as amended (fee-relief), to offset the total budget allocated for activities which do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee-relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2011 budgeted resources for NRC's fee-relief activities are \$95.4 million. The NRC's 10 percent fee-relief amount in FY 2011 is \$101.8 million, leaving a \$6.4 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2011 budget for fee-relief activities is lower than FY 2010, primarily due to a decrease in budgeted resources for nonprofit educational exemptions, international activities, small entity subsidies, and grants for fellowships and scholarships. These values are shown in Table III. The FY 2010 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III. - FEE-RELIEF ACTIVITIES

[Dollars in millions]

<u>Fee-Relief Activities</u>	<u>FY 2010 Budgeted Costs</u>	<u>FY 2011 Budgeted Costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee: a. International activities	\$18.2	\$15.1

<u>Fee-Relief Activities</u>	<u>FY 2010 Budgeted Costs</u>	<u>FY 2011 Budgeted Costs</u>
b. Agreement State oversight	\$11.2	\$14.1
c. Scholarships and Fellowships	\$15.0	\$11.5
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:		
a. Fee exemption for nonprofit educational institutions	\$17.4	\$13.3
b. Costs not recovered from small entities under 10 CFR 171.16(c)	\$6.1	\$5.6
c. Regulatory support to Agreement States	\$23.1	\$18.0
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	\$15.1	\$16.6
e. In situ leach rulemaking and unregistered general licensees	<u>\$2.4</u>	<u>\$1.2</u>
Total fee-relief activities	\$108.5	\$95.4
Less 10 percent of NRC's FY 2011 total budget (less non-fee items)	<u>-\$101.4</u>	<u>-\$101.8</u>
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	\$7.1	-\$6.4

Table IV shows how the NRC is allocating the \$6.4 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment 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 surplus adjustment is subtracted from the required annual fee recovery from each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2011, this allocation percentage was updated based on review of recent data which reflects the change in the support to the various fee classes. The

allocation percentage of LLW surcharge increased for operating reactors and fuel facilities, and decreased for materials users compared to FY 2010.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2011, the total budget allocated for LLW activity is \$3.0 million. (Individual values may not sum to totals due to rounding.)

TABLE IV. - ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2011

[Dollars in millions]

	LLW Surcharge		Fee-Relief Adjustment		Total
	<u>Percent</u>	<u>\$</u>	<u>Percent</u>	<u>\$</u>	<u>\$</u>
Operating Power Reactors	70.0	\$2.1	85.9	-\$5.5	-\$3.4
Spent Fuel Storage/Reactor Decommissioning	---	---	3.7	-\$0.2	-\$0.2
Research and Test Reactors	---	---	0.2	\$0.0	\$0.0
Fuel Facilities	24.0	\$0.7	6.2	-\$0.4	\$0.3
Materials Users	6.0	\$0.2	2.8	-\$0.2	\$0.0
Transportation	---	---	0.5	\$0.0	\$0.0
Uranium Recovery	---	---	<u>0.8</u>	<u>\$0.0</u>	<u>\$0.0</u>
Total	100.0	\$3.0	100.0	-\$6.4	-\$3.3

2. Revised Annual Fees.

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2011 to recover approximately 90 percent of the NRC's FY 2011 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through Part 170 fees. The Part 170 collections estimate for this final rule (\$369.3) increases by \$12 million from the FY 2010 fee

rule. The total amount to be recovered through annual fees for this final rule is \$546.9 million, which is a \$0.5 million increase from the proposed rule. The required annual fee collection in FY 2010 was \$553.8 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with FY 2010 annual fees, the FY 2011 final rebaselined fees are higher for four classes of licensees (spent fuel storage and reactors in decommissioning facilities, research and test reactors, fuel facilities and transportation), and lower for one class of licensees (power reactors). Within the uranium recovery fee class, the annual fees for most licensees decrease, while the annual fee for one fee category increases. The annual fee increases for most fee categories in the materials users' fee class.

The NRC's total fee recoverable budget, as mandated by law, is approximately \$3.6 million higher in FY 2011 as compared with FY 2010. The FY 2011 budget was allocated to the fee classes that the budgeted activities support. The increase is primarily due to the higher FY 2011 budget supporting the spent fuel storage and transportation activities, fuel facility reviews, materials users' activities, uranium recovery facilities, and research and test reactor reviews.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2011), the estimated Part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2010 to FY 2011.

Table V shows the rebaselined fees for FY 2011 for a representative list of categories of licensees. The FY 2010 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V. - REBASELINED ANNUAL FEES

<u>Class/Category of Licenses</u>	<u>FY 2010 Annual Fee</u>	<u>FY 2011 Annual Fee</u>
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	\$4,784,000	\$4,673,000
Spent Fuel Storage/Reactor Decommissioning	\$148,000	\$241,000
Research and Test Reactors (Nonpower Reactors)	\$81,700	\$86,300
High Enriched Uranium Fuel Facility	\$5,439,000	\$6,085,000
Low Enriched Uranium Fuel Facility	\$2,047,000	\$2,290,000
UF ₆ Conversion Facility	\$1,111,000	\$1,243,000
Conventional Mills	\$38,300	\$32,300
Typical Materials Users:		
Radiographers (Category 3O)	\$28,200	\$25,700
Well Loggers (Category 5A)	\$11,900	\$10,000
Gauge Users (Category 3P)	\$4,500	\$4,800
Broad Scope Medical (Category 7B)	\$45,100	\$45,400

The work papers that support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. Beginning in FY 2011, the NRC transitioned to a new budget structure. Therefore, the reports included in these work papers summarize the FY 2011 budgeted FTE and contract dollars allocated to each fee class and fee-relief category at the product line level. Since the FY 2010 and FY 2011 budget structures are appreciably different, the reports comparing the FY 2011 allocations to

FY 2010 are at a higher summary level. The work papers are available online at <http://www.regulations.gov> by searching on Docket ID **NRC-2011-0016** and in the NRC Library (ML11147A057) <http://www.nrc.gov/reading-rm/adams.html>. The work papers may also be examined at the NRC PDR located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, Maryland 20852.

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. of this section. Individual values in the Tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities.

The FY 2011 budgeted costs 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 \$30.1 million. This value is 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 for allocated generic transportation resources and fee-relief. In FY 2011, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1., “Application of Fee-Relief and Low-Level Waste Surcharge” of this document). The summary calculations used to derive this value are presented in Table VI for FY 2011, with FY 2010 values shown for comparison. (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>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$48.8	\$55.7

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Less estimated Part 170 receipts	<u>-\$21.2</u>	<u>-\$26.6</u>
Net Part 171 resources	\$27.6	\$29.1
Allocated generic transportation	+ \$0.5	+ \$0.6
Fee-relief adjustment/LLW surcharge	+ \$0.7	+ \$0.3
Billing adjustments	<u>-\$0.1</u>	<u>-\$0.0</u>
Total required annual fee recovery	\$28.8	\$30.1

The increase in total budgeted resources allocated to this fee class from FY 2010 to FY 2011 is primarily due to increased support for licensing amendments, and rulemaking for regulatory framework for reprocessing. In the final rule, due to the final appropriation adjustment, the FY 2011 annual fee for all but one fuel facility fee category increased slightly from the proposed rule.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and 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 (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.

Each year, 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: 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 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 regulatory effort for each fee category (not per facility). The following factors have changed compared to FY 2010. The total effort factors for the Limited Operations

fee category has increased from FY 2010, while the Uranium Enrichment fee category factors decreased from FY 2010 primarily due to a shift of one licensee from the Uranium Enrichment fee category to Limited Operations fee category.

TABLE VII. – EFFORT FACTORS FOR FUEL FACILITIES, FY 2011

<u>Facility Type (fee category)</u>	<u>Number of Facilities</u>	<u>Effort Factors (percent of total)</u>	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (35.5)	97 (46.2)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (27.9)	35 (16.7)
Limited Operations (1.A.(2)(a))	2	15 (6.0)	8 (3.8)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.2)	15 (7.1)
Hot Cell (1.A.(2)(c))	1	6 (2.4)	3 (1.4)
Uranium Enrichment (1.E)	2	56 (22.3)	45 (21.4)
UF ₆ Conversion (2.A.(1))	1	12 (4.8)	7 (3.3)

For FY 2011, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are \$16,234,471. This amount is 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 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of \$13,517,946 for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment (\$343,140) 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 fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII. - ANNUAL FEES FOR FUEL FACILITIES

<u>Facility Type (fee category)</u>	<u>FY 2011 Final Annual Fee</u>
High Enriched Uranium Fuel (1.A.(1)(a))	\$6,085,000
Low Enriched Uranium Fuel (1.A.(1)(b))	\$2,290,000
Limited Operations Facility (1.A.(2)(a))	\$752,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	\$1,178,000
Hot Cell (and others) (1.A.(2)(c))	\$589,000
Uranium Enrichment (1.E.)	\$3,271,000
UF ₆ Conversion (2.A.(1))	\$1,243,000

b. Uranium Recovery Facilities.

The total FY 2011 budgeted costs 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.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately \$1.0 million. The derivation of this value is shown in Table IX, with FY 2010 values shown for comparison purposes.

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

[Dollars in millions]

<u>Summary fee calculations</u>	<u>FY 2010 Final</u>	<u>FY 2011 Final</u>
Total budgeted resources	\$6.69	\$7.15

<u>Summary fee calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Less estimated Part 170 receipts	<u>-\$5.83</u>	<u>-\$6.09</u>
Net Part 171 resources	\$0.86	\$1.06
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	+ \$0.05	- \$0.05
Billing adjustments	<u>-\$0.01</u>	<u>\$0.00</u>
Total required annual fee recovery	\$0.91	\$1.01

The increase in total budgeted resources allocated to this fee class from FY 2010 to FY 2011 is primarily due to an increase in DOE Title I licensing activities partially offset by an increase in Part 170 estimates. In the final rule, due to the final appropriation adjustment, the FY 2011 annual fee for all uranium recovery fee categories increased slightly from the proposed rule.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2011, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for NRC's Title I activities, plus 10 percent of the remaining annual fee amount, including the fee-relief and generic/other costs, for the uranium recovery class. The remaining

90 percent of the fee-relief and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. The distribution of 10 percent of the generic budgeted costs to DOE and 90 percent to other facilities is a change from FY 2010 when the distribution was 35 percent and 65 percent to DOE and other facilities, respectively. The change reflects NRC's current level of effort.

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 (UMTRCA Title I and Title II) general licenses:	
UMTRCA Title I budgeted costs less Part 170 receipts	\$ 745,889
10 percent of generic/other uranium recovery budgeted costs	\$31,312
10 percent of uranium recovery fee-relief adjustment	<u>- \$4,992</u>
Total Annual Fee Amount for DOE (rounded)	\$772,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	\$281,810
90 percent of uranium recovery fee-relief adjustment	<u>- \$44,924</u>
Total Annual Fee Amount for Other Uranium Recovery Licenses	\$236,887

The DOE fee increases in FY 2011 compared to FY 2010 due to higher budgeted resources for UMTRCA Title I activities. The annual fee for other uranium recovery licensees decreases in FY 2011. Although the distribution percentage of the generic budgeted costs to other uranium facilities increased from FY 2010, the total annual fee amount to be recovered

decreases in FY 2011 compared to FY 2010, primarily due to increased activities for DOE Title I facilities.

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately \$237,000 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 2011 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2011, these categories are conventional uranium mills and heap leach facilities, uranium solution mining and resin In Situ Recovery (ISR) facilities, mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix, because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the FY 2011 matrix are operations, waste operations, and groundwater protection. 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 protection activities have weights of 0, 5, and 10, respectively, in the FY 2011 matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously).

Total benefit factors by fee category, and per licensee in each fee category, are then calculated. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit 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. - BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

<u>Fee Category</u>	<u>Number of Licensees</u>	<u>Benefit Factor Per Licensee</u>	<u>Total Value</u>	<u>Benefit Factor Percent Total</u>
Conventional and Heap Leach mills (2.(A).2.a.)	1	200	200	14
Basic In Situ Recovery facilities (2.(A).2.b.)	4	190	760	52
Expanded In Situ Recovery facilities (2.(A).2.c.)	1	215	215	15
In Situ Recovery Resin Facilities (2.(A).2.d.)	1	180	180	12
11e.(2) disposal incidental to existing tailings sites (2.(A).4.)	1	65	65	4
Uranium water treatment (2.(A).5.)	1	45	45	3
			1465	

Applying these factors to the approximately \$237,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII:

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

<u>Facility Type (fee category)</u>	<u>FY 2011 Final Annual Fee</u>
Conventional and Heap Leach mills (2.A.(2)(a))	\$32,300

Basic In Situ Recovery facilities (2.A.(2)(b))	\$30,700
Expanded In Situ Recovery facilities (2.A.(2)(c))	\$34,800
In Situ Recovery Resin facilities (2.A.(2)(d))	\$29,100
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	\$10,500
Uranium water treatment (2.A.(5))	\$7,300

c. Operating Power Reactors.

The \$460.9 million in budgeted costs to be recovered through FY 2011 annual fees assessed to the power reactor class was calculated as shown in Table XIII. The FY 2010 values are shown for comparison. (Individual values 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>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$787.3	\$783.6
Less estimated Part 170 receipts	<u>-\$312.5</u>	<u>-\$320.6</u>
Net Part 171 resources	\$474.8	\$463.0
Allocated generic transportation	+ \$0.8	+ \$0.9
Fee-relief adjustment/LLW surcharge	+\$7.5	- \$3.4
Billing adjustments	<u>-\$1.0</u>	<u>\$ 0.4</u>
Total required annual fee recovery	\$482.1	\$460.9

The annual fee for power reactors decreases in FY 2011 compared to FY 2010 due to a decrease in budgeted resources, increase in the Part 170 collections estimate, and the fee-relief surplus adjustment. The budgeted costs to be recovered through annual fees to power reactors

are divided equally among the 104 power reactors licensed to operate resulting in a FY 2011 annual fee of \$4,432,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2011 spent fuel storage/reactor decommissioning annual fee of \$241,000. The total FY 2011 annual fee is \$4,673,000 for each power reactor licensed to operate. In the final rule, due to the final appropriation adjustment, the FY 2011 annual fee for power reactors increased slightly from the proposed rule. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning.

For FY 2011, budgeted costs of approximately \$29.7 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR 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. The FY 2010 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

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

[Dollars in millions]

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$24.1	\$33.4
Less estimated Part 170 receipts	- \$6.4	- \$4.0
Net Part 171 resources	\$17.7	\$29.4
Allocated generic transportation	+ \$0.4	+ \$0.5
Fee-relief adjustment	+ \$0.2	- \$0.2

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Billing adjustments	<u>\$0.0</u>	<u>\$0.0</u>
Total required annual fee recovery	\$18.2	\$29.7

The value of total budgeted resources for this fee class is higher in FY 2011 than in FY 2010, due to increased budgeted resources for spent fuel storage licensing and certification activities and lower Part 170 collections estimate, partially offset by the fee-relief surplus adjustment. The required annual fee recovery amount is divided equally among 123 licensees, resulting in an FY 2011 annual fee of \$241,000 per licensee, which is unchanged from the proposed rule.

e. Research and Test Reactors (Nonpower Reactors).

Approximately \$350,000 in budgeted costs is to be recovered through annual fees assessed to the research and test reactor class of licenses for FY 2011. Table XV summarizes the annual fee calculation for research and test reactors for FY 2011. The FY 2010 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

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

[Dollars in millions]

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$1.31	\$1.87
Less estimated Part 170 receipts	<u>- \$1.01</u>	<u>- \$1.54</u>
Net Part 171 resources	\$0.30	\$0.33

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Allocated generic transportation	+ \$0.01	+ \$0.02
Fee-relief adjustment	+\$0.01	- \$0.01
Billing adjustments	<u>\$0.00</u>	<u>\$0.00</u>
Total required annual fee recovery	\$0.33	\$0.35

The increase in annual fees from FY 2010 to FY 2011 is primarily due to an increase in budgeted costs for review of licensing amendments partially offset by higher estimated Part 170 revenue and the fee-relief surplus adjustment. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2011 annual fee of \$86,300 for each licensee. In the final rule, due to the final appropriation adjustment, the FY 2011 annual fee for non-power reactors increased slightly from the proposed rule.

f. Rare Earth Facilities.

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2011.

g. Materials Users.

Table XVI shows the calculation of the FY 2011 annual fee amount for materials users licensees. The FY 2010 values are shown for comparison. 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. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI. - ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$28.8	\$30.0
Less estimated Part 170 receipts	<u>-\$1.8</u>	<u>-\$1.6</u>
Net Part 171 resources	\$27.0	\$28.5
Allocated generic transportation	+\$0.8	+\$1.0
Fee-relief adjustment/LLW surcharge	+ \$0.9	- \$0.0
Billing adjustments	<u>-\$0.0</u>	<u>-\$0.0</u>
Total required annual fee recovery	\$28.7	\$29.5

The total required annual fees to be recovered from materials licensees increase in FY 2011, mainly because of increases in the budgeted resources allocated to this fee class for licensing and oversight activities, and lower estimated Part 170 fee revenue compared to FY 2010. Annual fees for most fee categories within the materials users' fee class increase while some decrease due to a decrease in inspection costs in certain fee categories. In the final rule, due to the final appropriation adjustment, the FY 2011 annual fee for some fee categories increased slightly from the proposed rule. Also in the final rule, the fees for some fee categories have decreased from the proposed rule due to a fee calculation adjustment. In the proposed rule fee category 3.D., which the NRC is eliminating in FY 2011, was inadvertently included in the annual fee calculation for the materials users fee class. An adjustment in this final rule removes fee category 3.D. from the fee calculation, resulting in a slight decrease in fees from the proposed rule for some fee categories.

To equitably and fairly allocate the \$29.5 million in FY 2011 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will 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 the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users licenses is developed as follows:

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

The constant is the multiple necessary to recover approximately \$21.2 million in general costs (including allocated generic transportation costs) and is 1.53 for FY 2011. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of \$273. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately \$8.2 million in inspection costs, and is 2.3 for FY 2011. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2011, approximately \$113,600 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 to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately \$178,000 allocated to the materials users fee class (see Section III.B.1., "Application of Fee-Relief and Low-Level Waste Surcharge," of this document),

and for certain categories of these licensees, a share of the approximately \$189,000 in LLW surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

In FY 2011, the NRC is eliminating fee Category 3.D. under byproduct materials since the agency does not expect to receive any license under the current definition of this fee category. The fee category will be reserved for future use.

h. Transportation.

Table XVII shows the calculation of the FY 2011 generic transportation budgeted resources to be recovered through annual fees. The FY 2010 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII. - ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

<u>Summary Fee Calculations</u>	FY 2010 <u>Final</u>	FY 2011 <u>Final</u>
Total budgeted resources	\$6.6	\$7.5
Less estimated Part 170 receipts	<u>-\$3.3</u>	<u>-\$3.4</u>
Net Part 171 resources	\$3.3	\$4.1

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR Part 71. The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs

benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2011 budgeted resources for generic transportation activities, including those to support DOE CoCs, are \$4.1million. The increase in Part 171 resources in FY 2011 compared to FY 2010 is primarily due to an increase in budgeted resources for transportation regulatory programs. The net Part 171 resources for these activities in the FY 2011 final rule increased slightly from the proposed rule due to the final appropriation adjustment. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee Category 18.A., for DOE transportation activities. The amount of the allocated generic resources 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 distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if 3 CoCs benefit the entire research and test reactor class, but only 4 of 32 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals $((4/32)*3)$, or 0.4 CoCs.

TABLE XVIII. - DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2011

[Dollars in millions]

<u>License Fee Class/DOE</u>	<u>Number CoCs Benefiting Fee Class or DOE</u>	<u>Percentage of Total CoCs</u>	<u>Allocated Generic Transportation Resources</u>
Total	85.5	100.0	\$4.11
DOE	22.0	25.7	\$1.06
Operating Power Reactors	19.0	22.2	\$0.91
Spent Fuel Storage/Reactor Decommissioning	10.0	11.7	\$0.48
Research and Test Reactors	0.5	0.6	\$0.02
Fuel Facilities	13.0	15.2	\$0.63
Materials Users	21.0	24.6	\$1.01

The NRC will continue to assess an annual fee to DOE 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 annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), resulting in a total annual fee of \$1,030,000 for FY 2011. This fee increase from FY 2010 is primarily related to higher budgeted resources for the NRC's transportation activities. The FY 2011 final rule amount for DOE increased by \$2,000 compared to the proposed rule due to the final appropriation adjustment.

3. Small Entity Fees.

The small entity annual fee is charged to those licensees who qualify as small entities and who would otherwise be required to pay annual fees as stipulated under § 171.16(d). In FY 2011, the NRC reexamined the small entity fee, including the new methodology developed in FY 2009. Per the methodology, the upper-tier small entity fee amount was 74% higher than the current fee of \$1,900, a reflection of the increase in annual fees for the materials users licensees for the past 2 years. Implementing this increase would have a disproportionate

impact upon NRC's small entity licensees. Therefore, in FY 2011, the NRC is limiting the increase for upper tier fees to \$2,300, a 21 percent increase, and the lower tier fees to \$500, a 25 percent increase.

4. Administrative Amendments.

Eliminate fee Category 3.D. in § 171.16 since the agency currently does not have any licensee under this category. Based on the definition of this fee category no future licensees are expected since there are no nonprofit educational institutions that are distributors of radiopharmaceuticals.

In summary, the NRC is --

1. Using the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;
2. Establishing rebaselined annual fees for FY 2011;
3. Increasing the maximum small entity fee from \$1,900 to \$2,300, and the lower tier fee from \$400 to \$500;
4. Eliminating fee Category 3.D.

IV. Voluntary Consensus Standards.

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) 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. The NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2011, as required by the OBRA-90, as amended. This

action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion.

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

VI. Paperwork Reduction Act Statement.

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

Public Protection Notification.

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

VII. Regulatory Analysis.

With respect to 10 CFR Part 170, this final rule was developed under Title V of the 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, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

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

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

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

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed OBRA-90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority, less appropriations from the NWF, be recovered through the assessment of fees. The OBRA-90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriation Act (EWDAA) amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007. As a result, the NRC is required to recover approximately 90 percent of its FY 2011 budget authority, less the amounts appropriated from the NWF, 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 2011 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of CoCs, registrations of sealed source and devices, and Government agencies. The OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that –

(1) The annual fees will be based on approximately 90 percent of the Commission's FY 2011 budget of \$1,054.1 million not including the following items: funds appropriated from the NWF to cover the NRC's high-level waste program, amounts appropriated for WIR and generic homeland security activities, and 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.

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 2011 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2011. This final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in annual fees charged to others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) 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 of Appendix A to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2011.

IX. Backfit Analysis.

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

X. Congressional Review Act.

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801—808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170.

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

10 CFR Part 171.

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

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

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

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

Authority: Section 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)); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 170.11, paragraph (a)(1)(iii)(D) is removed and reserved and paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) are revised to read as follows:

§ 170.11 Exemptions.

(a) (1)(iii) * * *

(A) The report should be submitted for the specific purpose of supporting ongoing NRC generic regulatory improvements or efforts (e.g., rules, regulations, regulatory guides, and policy statements), and the agency, at the time the document is submitted, plans to use it for that purpose. The exemption applies even if ultimately the NRC does not use the document as planned;

(B) The NRC must be the primary beneficiary of the NRC's review and approval of these documents. This exemption does not apply to a topical report submitted for the purpose of obtaining NRC approval for future use of the report by the industry to address licensing or safety issues, even though the NRC may realize some benefits from its review and approval of the document; and

* * * * *

3. 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 \$273 per hour.

4. In § 170.21, in the table, fee Category K is 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]

<p align="center"><u>Facility categories and type of fees</u></p> <p align="center">* * * * *</p>	<p align="center"><u>Fees^{1, 2}</u></p>
<p>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.</p> <p>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</p>	<p align="center">\$17,800</p>
<p>2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a). Application – new license, or amendment; or license exemption request</p>	<p align="center">\$9,600</p>
<p>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</p>	<p align="center">\$4,400</p>
<p>4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances. Application – new license, or amendment; or license exemption request</p>	<p align="center">\$2,700</p>
<p>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</p>	<p align="center">\$1,400</p>

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

* * * * *

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

5. In § 170.31, the table is revised to read as follows:

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

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

<u>Category of materials licenses and type of fees¹</u>	<u>Fee^{2, 3}</u>
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) [Program Code(s): 21130]	Full Cost
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	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 [Program Code(s): 21310, 21320]	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) [Program Code(s): 23200]	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 [Program Code(s): 22140]	\$1,300
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 [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	\$2,500
E. Licenses or certificates for construction and operation	

of a uranium enrichment facility [Program Code(s): 21200]	Full Cost
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	Full Cost
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, 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) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	Full Cost
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	Full Cost
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	Full Cost
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost
(f) Other facilities [Program Code(s): 11700]	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) [Program Code(s): 11600, 12000]	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) [Program Code(s): 12010]	Full Cost
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding. Application [Program Code(s): 11210]	\$600
C. All other source material licenses. Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	\$5,400
3. Byproduct material:	

<p>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 [Program Code(s): 03211, 03212, 03213]</p>	\$12,800
<p>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 [Program Code(s): 03214, 03215, 22135, 22162]</p>	\$4,400
<p>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). Application [Program Code(s): 02500, 02511, 02513]</p>	\$6,500
<p>D. [Reserved]</p>	N/A ⁶
<p>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 [Program Code(s): 03510, 03520]</p>	\$3,100
<p>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 [Program Code(s): 03511]</p>	\$6,400
<p>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 [Program Code(s): 03521]</p>	\$61,000
<p>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 [Program Code(s): 03254, 03255]</p>	\$4,300

<p>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.</p> <p>Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]</p>	\$11,400
<p>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.</p> <p>Application [Program Code(s): 03240, 03241, 03243]</p>	\$2,000
<p>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.</p> <p>Application [Program Code(s): 03242, 03244]</p>	\$1,100
<p>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.</p> <p>Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]</p>	\$5,400
<p>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.</p> <p>Application [Program Code(s): 03620]</p>	\$3,500
<p>N. Licenses that authorize services for other licensees, except:</p> <ul style="list-style-type: none"> (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. <p>Application [Program Code(s): 03219, 03225, 03226]</p>	\$6,400

O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Application [Program Code(s): 03310, 03320]	\$4,000
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	\$1,500
Q. Registration of a device(s) generally licensed under part 31 of this chapter. Registration	\$400
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section. ⁵ 1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified. Application [Program Code(s): 02700]	\$2,500
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5). Application [Program Code(s): 02710]	\$1,500
S. Licenses for production of accelerator-produced radionuclides. Application [Program Code(s): 03210]	\$6,500
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. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	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 [Program Code(s): 03234]	\$8,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The	

licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. Application [Program Code(s): 03232]	\$4,900
5. Well logging: A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. Application [Program Code(s): 03110, 03111, 03112]	\$3,300
B. Licenses for possession and use of byproduct material for field flooding tracer studies. Licensing [Program Code(s): 03113]	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 [Program Code(s): 03218]	\$21,800
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 gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Application [Program Code(s): 02300, 02310]	\$8,800
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 [Program Code(s): 02110]	\$8,500
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 [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	\$2,700
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. Application [Program Code(s): 03710]	\$2,500
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	\$7,600
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	\$8,900
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. Application – each source	\$10,300
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	\$1,040
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	\$3,900
Inspections	Full Cost
2. Users.	
Application	\$3,900
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.	Full Cost
<p>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.).</p> <p>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</p>	\$17,800
<p>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 (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.). Application – new license, or amendment; or license exemption request</p>	\$9,600
<p>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</p>	\$4,400
<p>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</p>	\$2,700
<p>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,</p>	

<p>therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.</p> <p>Minor amendment</p>	\$1,400
<p>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.).</p> <p><i>Category 1 (Appendix P, 10 CFR Part 110) Exports:</i></p> <p>F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.40(b)(6)(i).</p> <p>Application – new license, or amendment; or license exemption request</p>	\$15,000
<p>G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent.</p> <p>Application – new license, or amendment; or license exemption request</p>	\$8,700
<p>H. Application for export of Category 1 materials requiring government-to-government consent.</p> <p>Application – new license, or amendment; or license exemption request</p>	\$5,500
<p>I. Requests for additional government-to-government consents in support of an export license application or active export license.</p> <p>Application – new license, or amendment; or license exemption request</p>	\$270
<p><i>Category 2 (Appendix P, 10 CFR part 110) Exports:</i></p> <p>J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.40(b)(6)(i).</p> <p>Application – new license, or amendment; or license exemption request</p>	\$15,000
<p>K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review.</p> <p>Application – new license, or amendment; or license exemption request</p>	\$8,700
<p>L. Application for the export of Category 2 materials.</p> <p>Application – new license, or amendment; or license exemption request</p>	\$5,500
M. [Reserved]	N/A ⁶
N. [Reserved]	N/A ⁶
O. [Reserved]	N/A ⁶
P. [Reserved]	N/A ⁶

Q. [Reserved]	N/A ⁶
<p><i>Minor Amendments (Category 1 and 2, Appendix P, 10 CFR part 110, Export and Imports):</i></p> <p>R. Minor amendment of any active export 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.</p> <p>Minor amendment</p>	\$1,400
<p>16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.</p> <p>Application</p>	\$2,300
<p>17. Master materials licenses of broad scope issued to Government agencies.</p> <p>Application [Program Code(s): 03614]</p>	Full Cost
<p>18. Department of Energy.</p> <p>A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).</p>	Full Cost
<p>B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.</p>	Full Cost

¹*Types of fees* - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances 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, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the 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 nonroutine 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 when 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 for which 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 Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

⁶ There are no existing NRC licenses in the fee category.

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

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

Authority: Section 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), sec. 651(e), Pub. L. 109-58, 119 Stat. 806-810 (42 U.S.C. 2014, 2021, 2021b, 2111).

7. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraph (c)(2) and the introductory text of paragraph (d)(1), and paragraphs (d)(2), (d)(3), and paragraph (e), are revised to read as follows:

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

* * * * *

(b)(1) The FY 2011 annual fee for each operating power reactor which must be collected by September 30, 2011, is \$4,673,000.

(2) The FY 2011 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 (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2011 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2011 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2011 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 for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is \$241,000.

(2) The FY 2011 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 (fee-relief adjustment). The activities comprising the FY 2011 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2011 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the 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, annual fees will be reduced. The activities comprising the FY 2011 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2011 fee-relief adjustment allocated to the operating power reactor class of licenses is -\$3.4 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2011 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately -\$32,313. This amount is calculated by dividing the total operating power reactor fee-relief adjustment (-\$3.4 million) by the number of operating power reactors (104).

(3) The FY 2011 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is -\$236,916. The FY 2011 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is approximately -\$1,926. This amount is calculated by dividing the total fee-relief adjustment 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 2011 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor.....	\$86,300
Test reactor.....	\$86,300

8. In § 171.16, paragraphs (c) and (d), and the introductory text of paragraph (e) is revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

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

	Maximum Annual Fee Per Licensed <u>Category</u>
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$450,000 to \$6.5 million	\$2,300
Less than \$450,000	\$500
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$450,000 to \$6.5 million	\$2,300
Less than \$450,000	\$500
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	\$2,300
Fewer than 35 employees	\$500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	\$2,300
Fewer than 20,000	\$500
Educational Institutions that are not State or Publicly	

Supported, and have 500 Employees or Fewer 35 to 500 employees	\$2,300
Fewer than 35 employees	\$500

(d) The FY 2011 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2011 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2011 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) [Program Code(s): 21130]	\$6,085,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	\$2,290,000
(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 [Program Code(s): 21310, 21320]	\$752,000
(b) Gas centrifuge enrichment demonstration facilities	\$1,178,000
(c) Others, including hot cell facilities	\$589,000
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) [Program Code(s): 23200]	N/A ¹¹
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 [Program Code(s): 22140]	\$3,600
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) [Program Code(s): 22110, 22111, 22120, 22131,	

22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	\$6,900
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	\$3,271,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	\$1,243,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, 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) Conventional and Heap Leach facilities [Program Code(s): 11100]	\$32,300
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	\$30,700
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	\$34,800
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	\$29,100
(e) Resin Toll Milling facilities [Program Code(s): 11555]	N/A ⁵
(f) Other facilities ⁴ [Program Code(s): 11700]	N/A ⁵
(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) [Program Code(s): 11600, 12000]	N/A ⁵
(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) [Program Code(s): 12010]	\$10,500
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	\$7,300
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210]	\$1,700
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	\$11,800
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	\$42,500

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 [Program Code(s): 03214, 03215, 22135, 22162]	\$11,800
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). [Program Code(s): 02500, 02511, 02513]	\$16,200
D. [Reserved]	N/A ⁵
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) [Program Code(s): 03510, 03520]	\$8,700
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 [Program Code(s): 03511]	\$15,200
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 [Program Code(s): 03521]	\$137,500
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 [Program Code(s): 03254, 03255]	\$8,100
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 [Program Code(s): 03250, 03251, 03252, 03253, 03256]	\$19,600
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 [Program Code(s): 03240, 03241, 03243]	\$4,700
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 [Program Code(s): 03242, 03244]	\$3,100
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 [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	\$14,100
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 [Program Code(s): 03620]	\$8,100
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 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. [Program Code(s): 03219, 03225, 03226]	\$14,300
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 [Program Code(s): 03310, 03320]	\$25,700
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	\$4,800
Q. Registration of devices generally licensed under part 31 of this chapter	N/A ¹³
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: ¹⁴ 1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	\$8,900
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710]	\$4,800
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	\$15,200
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 [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	N/A ⁵
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 [Program Code(s): 03234]	\$31,200
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 [Program Code(s): 03232]	\$14,400
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 [Program Code(s): 03110, 03111, 03112]	\$10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	N/A ⁵
6. Nuclear laundries: A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	\$44,800
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 gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	\$17,500
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 [Program Code(s): 02110]	\$45,400
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 [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	\$8,400
8. Civil defense: A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	\$8,900
9. Device, product, or sealed source safety evaluation: A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	\$11,500

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	\$13,500
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	\$15,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	\$1,600
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/A ⁶
2. Other Casks	N/A ⁶
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	N/A ⁶
2. Users	N/A ⁶
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	N/A ⁶
11. Standardized spent fuel facilities	N/A ⁶
12. Special Projects	N/A ⁶
13. A. Spent fuel storage cask Certificate of Compliance	N/A ⁶
B. General licenses for storage of spent fuel under 10 CFR 72.210	N/A ¹²
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	N/A ⁷
B. Site-specific decommissioning activities associated with unlicensed sites, 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 [Program Code(s): 03614]	\$476,000
18. Department of Energy:	
A. Certificates of Compliance	\$1,030,000 ¹⁰
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	\$772,000

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. 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, 2010, and permanently ceased licensed activities entirely before this date. 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 Other facilities include 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 that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

¹⁰ This includes Certificates of Compliance issued to the Department of Energy that are not funded from 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.

¹⁴ Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment 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 fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2011 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 2nd day of June 2011.

For the Nuclear Regulatory Commission.

/RA/

J. E. Dyer,
Chief Financial Officer.

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

APPENDIX A TO FINAL RULE, REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FISCAL YEAR 2011 -- REGULATORY FLEXIBILITY ANALYSIS FOR THE FINAL AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND 10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act (RFA), as amended at 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 Nuclear Regulatory Commission (NRC or the Commission) has established standards for determining which NRC licensees qualify as small entities (Title 10 of the *Code of Federal Regulations* (10 CFR) 2.810). These standards were based on the Small Business Administration's most common receipts-based size standards and provides 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 rule are based on the NRC's size standards.

The NRC is required each year, under the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the Nuclear Waste Fund (NWF) and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. The 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 the NRC in identifying and determining the fees to be assessed and collected in any given FY.

The Commission is rebaselining its 10 CFR Part 171 annual fees in FY 2011. As compared with FY 2010 annual fees, the FY 2011 final rebaselined fees are higher for four classes of licensees (spent fuel storage and reactors in decommissioning facilities, research and test reactors, fuel facilities, and transportation), and lower for one class of licensees (power reactors). Within the uranium recovery fee class, the final annual fees for most licensees decrease, while the final annual fee for one fee category increases. The annual fee increases for most fee categories in the materials users' fee class.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) 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 SBREFA also requires that an agency prepare a written compliance guide to assist small entities in complying with each rule for which a Regulatory Flexibility Analysis (RFA) is prepared. As required by law, this analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2011 fee rule.

II. Impact on Small Entities.

The fee rule results in substantial fees charged to those individuals, organizations, and companies licensed by the NRC, including those licensed under the NRC materials program.

Comments received on previous fee rulemakings and the small entity certifications in response to previous final fee rules indicate that 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 fees on materials licensees. In FY 2010, about 29 percent of these licensees (approximately 921 licensees) qualified as small entities.

Commenters on previous fee rulemakings consistently indicated that the following would occur if the final 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 final fees would be identical for both small and large firms.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the final 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 abandon the materials license altogether. Commenters estimated that the final rule would cause roughly 10 percent of the well-logging licensees to terminate their licenses immediately and approximately 25 percent to terminate 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 final 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 difficult for some facilities to meet.

Over 3,000 licenses, approvals, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some terminations were requested because the license was no longer needed or could be combined with registrations, indications are that the economic impact of the fees caused other terminations.

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 frequency of use of 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 a maximum fee for small entities is the most appropriate and effective option for reducing the impact of fees on small entities.

III. Maximum Fee.

The SBREFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined 10 CFR Part 170 licensing and inspection fees and Agreement State fees for 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 would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark States, the NRC used Washington's maximum Agreement State fee of \$3,800 as the ceiling for 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 reanalyzed 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 fees NRC charged 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. Because of the 25 percent increase, in FY 2000 the maximum small entity annual fee increased from \$1,800 to \$2,300. However, despite the increase, total fees for many small entities were reduced because they no longer paid Part 170

fees. Costs not recovered from small entities were 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 could continue to have a significant impact on materials licensees with relatively low annual gross receipts. Therefore, the NRC continued to provide the lower-tier small entity annual fee for small entities with relatively low gross annual receipts, manufacturing concerns, and for educational institutions not State or publicly supported with fewer than 35 employees. The NRC also increased the lower-tier small entity fee by 25 percent, the same percentage increase to the maximum small entity annual fee, resulting 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 reexamine the small entity fees every 2 years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officers Act. Accordingly, the NRC examined the small entity fees again in FY 2003 and FY 2005, determining that a change was not warranted to those fees established in FY 2001.

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 received one comment requesting that 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, in addition to the Part 171 small entity fee reduction. Regarding export licenses, 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 charges fees per application, this 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 retained the \$2,300 small entity annual fee and the \$500 lower-tier small entity annual fee for FY 2007 and FY 2008.

The NRC conducted an in-depth biennial review of the FY 2009 small entity fees. The review noted significant changes between FY 2000 and FY 2008 in both the external and internal environment which impacted fees for NRC's materials users licensees. Since FY 2000, small entity licensees in the upper tier had increased approximately 53 percent. In addition, due to changes in the law, NRC is now required to recover only 90 percent of its budget authority compared to 100 percent recovery required in FY 2000. This 10 percent fee-relief has influenced the materials users' annual fees. A decrease in the NRC's budget allocation to the materials users also influenced annual fees in FY 2007 and FY 2008.

Based on the review, the NRC changed the methodology for reviewing small entity fees. The NRC determined the maximum small entity fee should be adjusted each biennial year using a fixed percentage of 39 percent applied to the prior 2-year weighted average of materials users fees for all fee categories which have small entity licensees. The 39 percent was based on the small entity annual fee for FY 2005, which was the first year the NRC was required to recover only 90 percent of its budget authority. The FY 2005 small entity annual fee of \$2,300 was 39 percent of the 2-year weighted average for all fee categories in FY 2005 and FY 2006 that had an upper-tier small entity licensee. The new methodology allows small entity licensees to be able to predict changes in their fee in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average smoothes the fluctuations caused by programmatic and budget variables and reflects the importance of the fee categories with the majority of small entities. The agency also determined the lower-tier annual fee should remain at 22 percent of the maximum small entity annual fee. In FY 2009, the NRC decreased the

maximum small entity fee from \$2,300 to \$1,900 and decreased the lower-tier annual fee from \$500 to \$400.

In FY 2011, the NRC reexamined the small entity fee, including the new methodology developed in FY 2009. Per the methodology used in FY 2009, the agency computed the small entity fee by using a fixed percentage of 39 percent applied to the prior 2-year weighted average of materials users' fees. This resulted in an upper-tier small entity fee amount that was 74 percent higher than the current fee of \$1,900, a reflection of the increase in annual fees for the materials users licensees for the past 2 years. Implementing this increase would have a disproportionate impact upon small NRC licensees. Therefore in FY 2011, NRC has decided to limit the increase for upper tier fees to \$2,300, a 21 percent increase, and the lower tier fee to \$500, a 25 percent increase. This increase in the small entity fee partially reflects the changes to the annual fee for the materials users for the previous 2 years.

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 RFA, 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 \$450,000, small governmental jurisdictions with a population of fewer than 20,000, small manufacturing entities that have fewer than 35 employees, and educational institutions that are not State or publicly supported and have fewer 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.

ATTACHMENT 1 TO APPENDIX A -- U. S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2011

Contents

- I. Introduction
- II. NRC Definition of Small Entity
- III. NRC Small Entity Fees
- IV. Instructions for Completing NRC Form 526

I. Introduction

The Small Business Regulatory Enforcement Fairness Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 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 2011.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2011 annual fees assessed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 171. The U.S. Nuclear Regulatory Commission (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 Web site at <http://www.nrc.gov>. The form can then be accessed by selecting “About NRC”, “How We Regulate”, “Licensing”, “License Fees”, then “Payment Terms, Options, and Forms,” selecting NRC Form 526. For licensees who cannot access the NRC’s Web site, NRC Form 526 may be obtained by calling the License Fee Billing Help Desk at 301-415-7554, or by e-mailing the fee staff at fees.resource@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, Accounts Receivable/Payable Branch, 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.

II. 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 and is a (a) concern that provides a service or a concern that is not engaged in manufacturing with average gross receipts of \$6.5 million or less over its last 3 completed fiscal years; or (b) manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

(2) *Small organization*--a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$6.5 million or less;

(3) *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; and

(4) *Small educational institution*--an educational institution that is (a) supported by a qualifying small governmental jurisdiction; or (b) 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 include 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, including a foreign entity, does not qualify as a small entity.

III. NRC Small Entity Fees

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.

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

	Maximum Annual Fee Per Licensed Category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$450,000 to \$6.5 million	\$2,300
Less than \$450,000	\$500
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$450,000 to \$6.5 million	\$2,300
Less than \$450,000	\$500
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	\$2,300
Fewer than 35 employees	\$500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	\$2,300
Fewer than 20,000	\$500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer	
35 to 500 employees	\$2,300
Fewer than 35 employees	\$500

IV. 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.)
 - (a) Enter the license number and invoice number exactly as they appear on the annual fee invoice.
 - (b) Enter the North American Industry Classification System.
 - (c) 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.

(d) Check the appropriate size standard under which the licensee qualifies as a small entity.

Check one box only. Note the following:

(i) 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.

(ii) 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.

(iii) NRC's size standards on a small entity are based on the Small Business Administration's regulations (13 CFR Part 121).

(iv) 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. Section 171.16(c) states licensees shall submit a proper 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 NRC 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, Accounts Receivable/Payable Branch, at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the License Fee Billing Help Desk at 301-415-7554, e-mail the fee staff at fees.resource@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 of 1986, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR Part 13.