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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

**[NRC–2011–0207]**

**RIN 3150–AJ03**

## Revision of Fee Schedules; Fee Recovery for Fiscal Year 2012

**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) 2012, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. Based on the Consolidated Appropriations Act of 2012, signed by President Obama on December 23, 2011, the NRC's required fee recovery amount for the FY 2012 budget is $1,038.1 million. After accounting for billing adjustments, the total amount to be billed as fees to licensees is $901 million.

**DATES:** This rule is effective on August 14, 2012.

**ADDRESSES:** Please refer to Docket ID NRC–2011–0207 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0207.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this notice entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1481, email: *Arlette.Howard@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Background

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483 (a)) and OBRA–90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

*Establishment of Fee Policy and Cost Recovery Methodology*

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, § 170.21 and § 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale for construction permits and operating license fees depending on plant size and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include

inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *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), regarding the charging of fees by Federal agencies. 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 Court, thus, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc.* v. *FCC,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *FCC,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *FCC,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *FCC,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the notice on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the **Federal Register** (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, 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.

*The NRC's Current Statutory Requirement for Cost Recovery Through Fees*

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit 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).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the **Federal Register** (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the **Federal Register** (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988, the NRC published an interim final rule in the **Federal Register** (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the **Federal Register** (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the **Federal Register** (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA–90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA–90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA–90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA–90, the NRC adjusted its fee regulations in 10 CFR part 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the **Federal Register** (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the **Federal Register** (55 FR 21173; May 23, 1990).

In FYs 1991–2000, the NRC continued to comply with OBRA–90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act 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.

In addition to the requirements of OBRA–90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of $3,300, an increase of 74 percent or $1,400 from FY 2009, and a lower-tier small entity fee of $700, an increase of 75 percent or $300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, $2,300 was the maximum upper-tier small entity fee and $500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011 $2,300 should be the maximum upper-tier small entity fee and $500 should be the lower-tier small entity fee. For this fee rule, the small entity fees remain unchanged. The next small entity biennial review is scheduled for FY 2013.

## II. Response to Comments

The NRC published the FY 2012 proposed fee rule on March 15, 2012 (77 FR 15530) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period (April 16, 2012), the NRC received responses from eight commenters that were considered in this fee rulemaking. The majority of the comments were received from the uranium industry in addition to comments received from the nuclear power industry, the materials industry, and small entities. The comments have been grouped by issues and are addressed in a collective response.

### *A. Specific Part 170 Issues*

1. Hourly Rate

*Comment.* The NRC staff received the following comments from the uranium recovery industry regarding the hourly rate. Several commenters stated they would be adversely impacted by the higher hourly rate in the form of larger invoices for the NRC staff's expended time during the license application and submittal review process. The commenters attributed the higher review costs to the NRC's regulatory process, which they believe has not improved as promised with the implementation of NUREG–1910—Generic Environment Impact Statement (GEIS) for *In Situ* Leach Uranium Milling Facilities, the Memorandum of Understanding (MOU) between the Commission and the Bureau of Land Management (BLM) (ADAMS Accession No. ML093430201), and performance based licensing which has resulted in delayed licensing application submittals and reviews. One commenter suggested the NRC should redouble its efforts to capitalize on GEIS. Another commenter stated the NRC should do more to ensure better implementation of the NRC/BLM MOU. The commenters suggested the NRC should expand performance based licensing because the risk posed by uranium recovery licensees is low based on materials handled, and an expansion would allow the use of Safety and Environmental Review Panels to approve certain actions, ultimately resulting in cost savings to licensees. Another commenter suggested, for example, that expending $150,000 and considerable time for the initial phase of a preoperational inspection for an existing facility is excessive. One commenter recommended that the NRC review the staff levels assigned to different activities and compare them to the risk to public health and the environment. Another commenter suggested the NRC improve the efficiency of the review processes and pass the realized gains in efficiency, in the form of decreased fees, to licensees. Several commenters stated the NRC should effectively manage resources to process new applications along with existing applications including proposed expansion projects. Another commenter suggested the NRC should move forward to provide a draft rule for public comment concerning Section 106 of the National Historic Preservation Act, and should look to other Federal agencies, such as the BLM, for best practices in the processing of 106 reviews. Several commenters recommended that the NRC, upon the completion of acceptance reviews, provide costs estimates for submittal reviews which detail the approximate staff hours required to review the submittal. The commenters stated the NRC should create a schedule of costs for common tasks which would include the approximate costs of performing tasks such as reviewing and approving surety, thereby enabling licensees to better budget for reviews by the NRC staff.

*Response.* Regarding the inefficiency of *in situ* leach GEIS, the NRC disagrees with the commenters because GEIS has reduced the amount of work required to prepare the site-specific supplemental environmental impact statements. The reduction was a result of the GEIS focusing on targeting issues of importance at each *in situ* leach facility. Additionally, the GEIS eliminated the need for public scoping. However, the Section 106 Tribal consultation process remains extensive for many NRC reviews due to many uranium recovery facilities located on or near land deemed important by many Indian tribes. The NRC is currently in the process of developing high level, agency-wide Section 106 guidance, which will eventually be made available to the public in the near future.

Regarding improving the implementation of the MOU for uranium recovery facilities, the NRC disagrees with the commenters because the NRC strongly supports the collaborative effort between the NRC and the BLM to foster effective communication between the two agencies and identify agency roles and responsibilities as they relate to the exchange of information concerning uranium recovery projects. The NRC recognizes certain applications have seen benefits from the enhanced cooperation realized by the MOU. However, it is the applicant's responsibility to ensure that both the BLM and the NRC receive the appropriate information at the same time; otherwise, cooperation on an environmental document is not feasible.

In reference to comments on the expansion of performance based licensing for uranium recovery facilities, the NRC disagrees with the commenters. Each license contains a list of criteria for determining whether or not an action requires a license condition. Uranium recovery licensees routinely use these criteria successfully for performing various changes and tests. However, certain activities will always fall outside the criteria resulting in the need for a license amendment. Significant well field expansions (satellite areas) and central plant modifications, for example, will always require license amendments. In general, the performance based license condition is streamlining the oversight process.

Regarding the comments on the inefficiency of the uranium recovery licensing review process, the NRC believes it has made substantial improvements that have benefitted the industry and NRC. During the licensing review process, the staff performs rigorous internal reviews of staff hours by task after completion of regulatory actions to evaluate efficiency.

Regarding the comment on tailoring staff hour levels to risk, the NRC staff determined this action is not always possible since the NRC staff must ensure facilities comply with our regulations, regardless of the perceived risk. Therefore, regardless of risk, a certain level of effort will always be required to perform certain tasks.

Regarding the comment concerning preoperational inspections as an example of a costly activity which can be reviewed based on the risk significance of a uranium recovery facility, the NRC staff is required to ensure that a new or restarting facility will be operated in a manner that complies with the regulations and license conditions. Activities such as the preoperational inspection provide the agency with an opportunity for one ''hard look'' at an operation prior to activation to determine the viability of an operation.

Regarding the processing of new uranium recovery applicants and major expansion amendments along with licensing actions for existing licensees, the NRC established a program strategy, that prioritizes work for existing licensees over new license and major expansion reviews to maintain safety. As the NRC licenses more facilities, more resources will be needed to manage the increased workload for existing licensees. The staff will prioritize available resources to accomplish the highest priority licensing work.

Regarding the commenters' suggestions to include a provision for cost estimates for the NRC review of uranium recovery license submittals, the NRC produced a general cost estimate for the completion of three new uranium recovery application reviews. The information was presented to industry in Denver, CO, in January 2011. The NRC will continue to update this information annually, or when a new license or major amendment review has been completed.

In reference to the comments to create a schedule of costs for common tasks, the staff compiled a list of over 20 amendments and reviews typically undertaken for uranium recovery licenses. The staff determined the creation of a schedule of costs for common tasks is very complex and would require additional resources in a challenging budget environment. Consequently, the NRC staff is not undertaking this task at this time in order to maintain focus on other high priority program activities.

In general, the NRC has implemented several methods which have improved the uranium recovery licensing review process. The pre-submission audit has been useful in improving the quality of applications which helps to expedite reviews. The NRC staff now issues draft licenses instead of open issues which eliminates review time. The NRC staff also performs acceptance reviews on responses to requests for additional information (RAI) to determine whether or not a review can proceed, thereby eliminating the time spent on continuing a review with incomplete information.

Finally, the NRC believes that the uranium recovery industry also plays a role in streamlining reviews. First, submitting applications that contain all the relevant information speeds up the NRC's review process. Second, the uranium recovery industry could submit design certification requests in the form of petitions for rulemaking with designs for certain common features such as central plants, satellite plants, wells, header houses, and ponds. In this manner, an applicant can merely incorporate by reference certain approved designs instead of reproducing these designs in an application. Third, the industry can maximize the effectiveness of the RAI process by providing prompt and complete answers to the NRC staff requests. Efficient and streamlined regulation requires a team-effort. Working together, both the NRC and the industry can continue to make improvements to our regulatory processes.

There are no changes to this final rule as a result of the comments concerning the hourly rate.

2. Flat Rates

*Comment.* One commenter suggested the NRC should establish more flat fees for activities for uranium recovery operations in order to provide more certainty regarding fees, with the goal of moving routine activities to flat fees.

*Response.* The NRC disagrees with this comment. Based on past experience, the NRC believes there would be a very limited number of licensing activities that would qualify for flat fees. The 10 CFR 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 10 CFR part 170. The average processing time is determined through a biennial review of

actual hours associated with processing these applications or amendments, and the ''flat'' rate is subject to change based on the NRC's professional hourly rate at the time of the rulemaking. Also, most potential flat fee tasks would have a large standard deviation per activity associated with each licensee because some review can be either simple or complex, thus, an average costs would not be feasible. An example is a surety review which can be either simple to complex in nature. If the agency were to impose an upper confidence limit calculation for surety reviews, the agency would benefit at the expense of some licensees who will overpay significantly for these types of reviews. Due to the complex nature of flat fees and required resources, the NRC will not undertake this activity to remain focused on high priority work. There are no changes to this final rule as a result of this comment.

3. Lack of Invoice Detail

*Comment.* Commenters suggested the NRC should prepare invoices with more detail, similar to invoices prepared by industry consultants, to better understand how staff time is allocated. One commenter stated invoices should include dates and times, similar to the private sector, which would allow licensees to comprehend work performed, hours spent and completion dates. Another commenter suggested that providing the names of the NRC staff members or contractors, including billable hours incurred, would allow licensees to understand how staff time is allocated and the costs of specific activities.

*Response.* The NRC agrees with the commenters. The NRC currently provides information requested by commenters through its invoice documentation with the exception of project manager (PM) and inspector names, which are available upon request. There is an Activity Inspection Report supplement available that further provides the detailed information identified by the commenters. Due to the large volume of data, the Activity Inspection Report is not routinely distributed with the invoice documentation unless specifically requested by the licensee or applicant.

The invoices issued to licensees and applicants summarize costs assessed under 10 CFR part 170, which include regular and non-regular hours billed, hourly and contract costs, total amount billed in addition to the vendor name, docket number, due date, and type of license. The NRC believes the Activity Inspection Report detailing the PM and inspector names for time activity code/inspection reports including regular hours billed is sufficient to enable licensees to identify tasks performed by the NRC staff along with associated costs.

Accordingly, there are no changes to this final rule as a result of these comments.

*B. Specific Part 171 Issues*

1. NRC's Small Business Size Standards

*Comment.* One commenter suggested that the NRC make a definite commitment to use the Small Business Administration's (SBA) ''Table of Small Business Size Standards'' to define a small business as it relates to the assessment of fees by the NRC. The commenter also stated that the table matches the ''North American Industry Classification System Codes,'' and should be used government-wide to ensure consistency in definitions for businesses in terms of size, type of industry, and other means of categorization.

*Response.* The NRC agrees with this comment. The NRC is committed to using the SBA's ''Table of Small Business Size Standards'' to qualify licensees as small entities in its assessment of fees, and acknowledges that this table matches the ''North American Industry Classification System Codes.'' Reduced fees for small entities fall into two categories, lower-tier annual fees and maximum upper-tier annual fees, to help lessen the financial impact for small entities participating in the nuclear power industry. The NRC will continue to comply with the Small Business Act which states that unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless proposed size standards meet certain criteria and are approved by the Administrator of the SBA. The NRC is currently updating its small business size standards to comply with the SBA size standards. There are no changes to this final rule as a result of this comment.

2. Small Entity Fees

*Comment.* One commenter suggested that the total percentage change in all fees be spread among all of the fee classes in an effort to eliminate hardships for some licensees who are impacted by an increase in annual fees.

*Response.* The NRC disagrees with this comment. The NRC acknowledges that an increase in fees can be difficult for some licensees to absorb. However, the NRC must remain in compliance with the OBRA–90, as amended, which requires the NRC to recover approximately 90 percent of its budget authority in a given year by charging fees to its licensees. The NRC fee methodology calculation consists of determining, to the maximum extent practicable, the reasonable relationship between costs and the provision of regulatory services to licensees. The NRC fees are based on current year budgeted costs of activities benefitting the associated license fee classes, and best reflect the license fee class to which the costs should be assessed. For each proposed fee rulemaking, in accordance with the Regulatory Flexibility Analysis Act, the NRC must consider the impact of the rulemaking on small entities and determine the best fee methodology to compute fees that minimize compliance costs and eliminate barriers to competition. The NRC's establishment of the small entity reduced fees into two tiers, lower-tier and maximum upper-tier annual fees, continues to be a practical solution for small entities. The small entity fees are reviewed biennially to assess the financial impact for small entities and encourage competition in the nuclear power industry. There are no changes to this final rule as a result of this comment.

3. Adding Additional Tiers for Small Entities

*Comment.* One commenter stated that the broad revenue range for small entities' gross annual receipts encompassing $450,000 to $6,500,000 tends to advantage larger firms while burdening smaller entities. The commenter indicated that its firm's revenue is at the lower end of this range, yet its fee is the same as another entity with three or four times its gross revenue. The commenter suggested that the NRC consider establishing additional tiers of gross annual receipts that correspond to more annual license fee levels in order to lower licensing fees and thereby reduce the licensing fee burden for small entities.

*Response.* The NRC disagrees with this comment. The NRC believes that the two-tiered reduced annual fees method currently in place provides substantial fee relief for small entities, including those with relatively low gross receipts. A reduction in fees for small entities must be paid for by other NRC licensees in order to meet the requirements of the OBRA–90, as amended, to recover most of the NRC's budget through fees. While establishing more tiers would reduce the burden for some small entities, a further reduction in fees would result in an increase in the small entity subsidy other licensees

must pay. The NRC supports the two-tiered reduced annual fees method because it provides a reasonable balance between the objectives of the OBRA-90 and the 1980 Regulatory Flexibility Act requirement that Federal agencies examine ways to minimize the significant impacts their rules may have on a substantial number of small entities. Therefore, the current two-tiered reduced annual fees method will remain intact with modifications to conform to SBA size standards, as necessary. There are no changes to this final rule as a result of this comment.

*C. Other Issues*

1. Transparency in Budgeting

*Comment.* One commenter stated that the NRC should continue to achieve greater transparency in its budgeting by revealing planned staffing and resource needs by individual programs, particularly in the areas of defense and national interest programs that are funded by taxpayers with appropriated funds. The commenter suggested that the NRC more fully explain the decrease in budgeted resources in FY 2012, and if the agency is planning similar reductions in future years for these programs.

*Response.* The NRC agrees with this comment. The NRC strives for transparency and openness with internal and external stakeholders in accomplishing its mission of protecting public health and safety and the environment. Although detailed budget discussions fall outside the scope of this rulemaking, the NRC recommends commenters and others review the NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011) (ADAMS Accession No. ML12137A853), for the NRC's budget plans for FY 2012 and beyond. There are no changes to this final rule as a result of this comment.

2. Allocation of Resources

*Comment.* One commenter stated that the industry is aware that the agency has $32 million in unobligated balances from prior years' appropriations that could be used to fund additional Fukushima-related work or be used to reduce licensee fees in future years. The commenter commends the NRC for supporting educational programs and suggested $15 million of the funds for education programs budgeted in FY 2012 be used to support the congressionally-authorized Integrated University Program trade school, scholarships, fellowships, and faculty development grants. The remaining funds would be utilized for curriculum development and to support nuclear technology programs at minority-serving institutions.

*Response.* The purposes of the proposed and final fee rulemakings are to describe, and solicit and evaluate comments on, the allocation of the NRC's budget for fee calculation purposes. The rules and supporting work papers do not address changes in budget resources, or use of prior-year funds but provide detailed information on how the fee calculations were derived in compliance with the OBRA–90 and the Consolidated Appropriations Act of 2012. Commenters and others may also review the NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011) (ADAMS Accession No. ML12137A853) for more detailed information on the NRC's budget for FY 2012, including the activities performed by each of the programs. The NRC will continue to request from Congress only those resources necessary to operate its programs efficiently, effectively, and in compliance with its mission of protecting people and the environment, while keeping fees as low as possible for all licensees. There are no changes to this final rule as a result of this comment.

## III. Final Action

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the costs 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. Under this rulemaking, the NRC continues the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA–90, the Atomic Energy Act, and the IOAA.

On December 23, 2011, President Obama signed the Consolidated Appropriations Act of 2012, giving the NRC a total appropriation of $1,038.1 million. Accordingly, in compliance with the Atomic Energy Act of 1954, as amended, and OBRA–90, the NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2012 budget authority, less the appropriations for non-fee items. The amount of the NRC's required fee collections is set by law and is, therefore, outside the scope of this rulemaking.

The NRC's total budget authority for FY 2012 is $1,038.1 million. The non-fee items excluded outside of the fee base include $0.8 million for WIR activities and $26.7 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover approximately $909.5 million in FY 2012 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This amount is $6.3 million less than the amount estimated for recovery in FY 2011, a decrease of less than 1 percent. The FY 2012 fee recovery amount is decreased by $8.5 million to account for billing adjustments (i.e., for FY 2012 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2012 for prior year invoices). This leaves approximately $901 million to be billed as fees in FY 2012 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2012. The FY 2011 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]

| | FY 2011 Final rule | FY 2012 Final rule |
|---|---|---|
| Total Budget Authority | $1,054.1 | $1,038.1 |
| Less Non-Fee Items | −36.5 | −27.5 |
| Balance | $1,017.6 | $1,010.6 |
| Fee Recovery Rate for FY 2012 | 90% | 90% |
| Total Amount to be Recovered for FY 2012 | $915.8 | $909.5 |
| 10 CFR Part 171 Billing Adjustments: | | |
| Unpaid Current Year Invoices (estimated) | 3.0 | 2.3 |
| Less Payments Received in Current Year for Previous Year Invoices (estimated) | −2.6 | −10.8 |
| Subtotal | 0.4 | −8.5 |
| Amount to be Recovered through 10 CFR Parts 170 and 171 Fees | $916.2 | $901.0 |
| Less Estimated 10 CFR Part 170 Fees | −369.3 | −345.2 |
| 10 CFR Part 171 Fee Collections Required | $546.9 | $555.8 |

In this final fee rule, the NRC amends fees for power reactors, non-power reactors, uranium recovery facilities, most fuel facilities, some small materials users, and the U.S. Department of Energy's (DOE) transportation license. The 10 CFR part 170 fees also decrease by $26.2 million from the proposed fee rule estimate of $371.4 million primarily due to a reduction in licensing actions. As a result of this change, the total annual fees for operating reactors increase by $25.1 million and fuel facilities increase by $1 million in this final rule. In general, the percentage changes in most annual fees compared to the previous year are relatively small due to a decrease in the NRC's appropriation as compared to FY 2011. The FY 2012 appropriation also resulted in a small increase to the average full-time equivalent (FTE) rate that is used to calculate the budget allocation to each of the fee classes and fee-relief activities in the final fee rule.

The NRC estimates that $345.2 million will be recovered from 10 CFR part 170 fees under this final fee rule. This represents a decrease of approximately 7.0 percent as compared to the actual 10 CFR part 170 collections of $369.3 million in FY 2011. The NRC derived the FY 2012 estimate of 10 CFR part 170 fee collections from the latest billing data available for each license fee class, with adjustments to account for changes in the NRC's FY 2012 budget, as appropriate. The remaining $555.8 million is to be recovered through the 10 CFR part 171 annual fees in FY 2012, which is an increase of approximately 1.6 percent compared to actual 10 CFR part 171 collections of $546.9 million for FY 2011. The change for each class of licensees affected is discussed in Section III.B.3 of this document.

The FY 2012 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 2012 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 2012 final rule. For these licensees, payment is due on the effective date of the FY 2012 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2012 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 2012 falls before the effective date of the FY 2012 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2011 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2012 final rule will be billed for the annual fee at the FY 2012 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

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

*A. Amendments to Title 10 of the Code of Federal Regulations (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*

For FY 2012, the NRC increased the hourly rate to recover the full cost of activities under the 10 CFR part 170 and used 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 increased the FY 2012 hourly rate to $274. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2012 hourly rate is less than one percent higher than the FY 2011 hourly rate of $273. The increase in the hourly rate is due primarily to higher agency direct budgeted resources, partially offset by a small increase in the number of direct FTEs. The following paragraphs described the hourly rate calculation in further detail.

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 multiplied by 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.

For FY 2012, the NRC used 1,371 hours per direct FTE, the same amount as FY 2011, 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 2012 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. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE II—HOURLY RATE CALCULATION

| | FY 2011 Final rule | FY 2012 Final rule |
|---|---|---|
| Mission Direct Program Salaries & Benefits | $337.4 | $349.9 |
| Mission Indirect Program Support | 25.9 | 25.9 |
| Agency Corporate Support, and the IG | 474.1 | 472.3 |
| Subtotal | 837.4 | 848.0 |
| Less Offsetting Receipts | −0.0 | −0.0 |
| Total Budget Included in Hourly Rate (Millions of Dollars) | 837.4 | 848.0 |
| Mission Direct FTEs (Whole numbers) | 2,236 | 2,258 |
| Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours) (Whole Numbers) | 273 | 274 |

As shown in Table II, dividing the FY 2012 $848 million budget amount included in the hourly rate by total mission direct FTE hours (2,258 FTE times 1,371 hours) results in an hourly rate of $274. The hourly rate is rounded to the nearest whole dollar.

2. Flat Application Fee Changes

The NRC adjusted the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $274, an increase of $1 from FY 2011. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2012. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. The NRC last performed this review as part of the FY 2011 fee rulemaking. The higher hourly rate of $274 is the primary reason for the increase in application fees.

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.R., and 16 of § 170.31 of flat fee categories. Applications filed on or after the effective date of the FY 2012 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

This rule is making administrative changes for clarity as follows:

a. § 170.21, fee category G, change the title for the description from ''Other Production and Utilization Facility'' to read ''Other Production or Utilization Facility.''

b. § 170.31, revise fee schedule. Under 10 CFR part 170, the descriptions for categories 14.A. and 14.B. are revised to add the phrase ''including MMLs'' in order to capture work activities outside of the category 17 description involving decommissioning actions and activities for master material license (MML) agencies (i.e., U.S. Department of Veteran Affairs, U.S. Navy, U.S. Air Force) and the fees are subject to full cost. This methodology ensures equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

c. Revises import and export licensing descriptions and correctly places them under 10 CFR part 170. The import and export licensing fee descriptions are updated for 15.F., 15.G., 15.J., 15.K., and 15.H. for clarity of the rule. This rule also further revises descriptions in sections 15.F., 15.G. and 15.H. from the FY 2012 proposed fee rule, in addition to Category 2.K. and Minor amendments section, for clarity of the rule.

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

1. Establishes a revised professional hourly rate to use in assessing fees for specific services;

2. Revises the license application fees to reflect the FY 2012 hourly rate; and

3. Makes administrative changes to §§ 170.21 and 170.31.

*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 to decrease 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 establishes rebaselined annual fees based on Public Law 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 to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC will apply 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 that 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 2012 budgetary resources for the NRC's fee-relief activities are $91.1 million. The NRC's 10 percent fee-relief amount in FY 2012 is $101.1 million, leaving a $10 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2012 budget for fee-relief activities is lower than FY 2011, primarily due to a decrease in budgeted resources for nonprofit educational exemptions, international activities support for agreement states licensees and generic decommissioning reclamation activities. Also, the NRC has included medical isotope production under fee relief categories to capture program activity for medical isotope production facilities for regulatory basis development. The FY 2012 NRC medical isotope budget of approximately $3 million is not attributable to existing NRC licensees. The funding for this activity along with other activities not attributable to existing NRC licensees will be offset by the agency's 10 percent appropriation. These values are shown in Table III. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

| Fee-relief activities | FY 2011 Budgeted costs | FY 2012 Budgeted costs |
|---|---|---|
| 1. Activities not attributable to an existing NRC licensee or class of licensee: | | |
| a. International activities | $15.1 | $9.0 |
| b. Agreement State oversight | 14.1 | 11.0 |
| c. Scholarships and Fellowships | 11.5 | 16.8 |
| d. Medical Isotope Production | N/A | 3.4 |
| 2. Activities not assessed 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy: | | |
| a. Fee exemption for nonprofit educational institutions | 13.3 | 11.2 |
| b. Costs not recovered from small entities under 10 CFR 171.16(c) | 5.6 | 6.5 |
| c. Regulatory support to Agreement States | 18.0 | 17.5 |
| d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes) | 16.6 | 14.0 |
| e. *In Situ* leach rulemaking and unregistered general licensees | 1.2 | 1.7 |
| Total fee-relief activities | 95.4 | 91.1 |
| Less 10 percent of NRC's FY 2011 total budget (less non-fee items) | −101.8 | −101.1 |
| Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees | −6.4 | −10.0 |

Table IV shows how the NRC will allocate the $10 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 for 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 2012, 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 decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2011.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2012, the total budget allocated for LLW activity is $3.9 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2012

[Dollars in millions]

| | LLW Surcharge | | Fee-relief adjustment | | Total |
|---|---|---|---|---|---|
| | Percent | $ | Percent | $ | $ |
| Operating Power Reactors | 60.0 | 2.3 | 86.0 | −8.6 | −6.3 |
| Spent Fuel Storage/Reactor Decommissioning | | | 3.3 | −0.3 | −0.3 |
| Research and Test Reactors | | | 0.2 | 0.0 | 0.0 |
| Fuel Facilities | 32.0 | 1.2 | 6.1 | −0.6 | 0.6 |
| Materials Users | 9.0 | 0.3 | 2.8 | −0.3 | 0.0 |
| Transportation | | | 0.5 | −0.1 | −0.0 |
| Uranium Recovery | | | 1.0 | −0.1 | −0.1 |
| Total | 100.0 | 3.9 | 100.0 | −10.0 | −6.1 |

2. Revised Annual Fees

The NRC revised its annual fees in §§ 171.15 and 171.16 for FY 2012 to recover approximately 90 percent of the NRC's FY 2012 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimate for this final rule is $345.2 million, a decrease of $24.1 million from the FY 2011 fee rule. The total amount to be recovered through annual fees for this final rule is $555.8 million, an increase of $26.2 million from the FY 2012 proposed fee rule due to a decrease in 10 CFR part 170 estimates compared to the proposed rule. 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 for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2011 annual fees, the FY 2012 final rebaselined fees are lower for two classes of licensees, spent fuel storage/reactors decommissioning facilities and research and test reactors and higher for operating reactors and fuel facilities. Within the uranium recovery fee class, the annual fees decrease for most licensees. 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 $6.3 million lower in FY 2012 as compared with FY 2011. The FY 2012 budget was allocated to the fee classes that the budgeted activities support. The decrease is primarily due to the lower FY 2012 budget supporting the operating reactors, spent fuel storage, research and test reactors, fuel facilities partially offset by higher FY 2012 budget for uranium recovery facilities and material users.

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 2012), the estimated 10 CFR 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 2011 to FY 2012.

Table V shows the rebaselined fees for FY 2012 for a representative list of categories of licensees. The FY 2011 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE V—REBASELINED ANNUAL FEES

| Class/category of licenses | FY 2011 Annual fee | FY 2012 Annual fee |
|---|---|---|
| Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee) | $4,673,000 | $4,766,000 |
| Spent Fuel Storage/Reactor Decommissioning | 241,000 | 211,000 |
| Research and Test Reactors (Nonpower Reactors) | 86,300 | 34,700 |
| High Enriched Uranium Fuel Facility | 6,085,000 | 6,329,000 |
| Low Enriched Uranium Fuel Facility | 2,290,000 | 2,382,000 |
| $UF_6$ Conversion Facility | 1,243,000 | 1,293,000 |
| Conventional Mills | 32,300 | 23,600 |
| Typical Materials Users: | | |
| Radiographers (Category 3O) | 25,700 | 25,900 |
| Well Loggers (Category 5A) | 10,000 | 10,200 |
| Gauge Users (Category 3P) | 4,800 | 4,900 |
| Broad Scope Medical (Category 7B) | 45,400 | 46,100 |

The work papers that support this final rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section V, Availability of Documents, of this document.

Paragraphs a. through h. of this section describe budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2012 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) are approximately $29 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 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2012, 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 2012, with FY 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $55.7 | $54.4 |
| Less estimated 10 CFR part 170 receipts | −26.6 | −25.6 |

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES—Continued

[Dollars in millions]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Net 10 CFR part 171 resources | 29.1 | 28.8 |
| Allocated generic transportation | +0.6 | +0.9 |
| Fee-relief adjustment/LLW surcharge | +0.3 | +0.6 |
| Billing adjustments | −0.0 | −0.5 |
| Total required annual fee recovery | 30.1 | 29.7 |

The decrease in total budgeted resources allocated to this fee class from FY 2011 to FY 2012 is primarily due to a reduction in licensing amendments and rulemakings. The annual fee for fuel facilities in the final rule increased compared to the proposed rule due to a lower 10 CFR part 170 estimate for FY 2012 related to reduced licensing actions. Moreover, termination of two licenses resulted in spreading of costs to other fee categories. The NRC allocates the total required annual fee recovery amount 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 10 CFR 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). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). In FY 2012, the total effort factors for the Limited Operations fee category are being zeroed because the licenses in this fee category were terminated. This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2011.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2012

| Facility type (fee category) | Number of facilities | Effort factors (percent of total) | |
|---|---|---|---|
| | | Safety | Safeguards |
| High Enriched Uranium Fuel (1.A.(1)(a)) | 2 | 89 (38.5) | 97 (47.0) |
| Low Enriched Uranium Fuel (1.A.(1)(b)) | 3 | 70 (30.3) | 35 (17.0) |
| Limited Operations (1.A.(2)(a)) | 0 | 0 (0.0) | 0 (0.0) |
| Gas Centrifuge Enrichment Demonstration (1.A.(2)(b)) | 1 | 3 (1.3) | 15 (7.3) |
| Hot Cell (1.A.(2)(c)) | 1 | 6 (2.6) | 3 (1.5) |
| Uranium Enrichment (1.E) | 2 | 51 (22.1) | 49 (23.8) |
| $UF_6$ Conversion (2.A.(1)) | 1 | 12 (5.2) | 7 (3.4) |

For FY 2012, the total budgeted resources for safety activities, before the fee-relief adjustment is made, are $15.4 million. 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 $13.7 million 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 $0.6 million 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

| Facility type (fee category) | FY 2012 Final annual fee |
|---|---|
| High Enriched Uranium Fuel (1.A.(1)(a)) | $6,329,000 |
| Low Enriched Uranium Fuel (1.A.(1)(b)) | 2,382,000 |
| Limited Operations Facility (1.A.(2)(a)) | 0 |
| Gas Centrifuge Enrichment Demonstration (1.A.(2)(b)) | 1,225,000 |
| Hot Cell (and others) (1.A.(2)(c)) | 612,000 |
| Uranium Enrichment (1.E.) | 3,403,000 |
| $UF_6$ Conversion (2.A.(1)) | 1,293,000 |

b. Uranium Recovery Facilities

The total FY 2012 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) are approximately $1 million. The derivation of this value is shown in Table IX, with FY 2011 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $7.15 | $9.52 |
| Less estimated 10 CFR part 170 receipts | −$6.09 | −8.30 |
| Net 10 CFR part 171 resources | 1.06 | 1.22 |
| Allocated generic transportation | N/A | N/A |
| Fee-relief adjustment | −0.05 | −0.1 |
| Billing adjustments | 0.00 | −0.00 |
| Total required annual fee recovery | 1.01 | 1.03 |

The increase in total budgeted resources allocated to this fee class from FY 2011 is primarily due to increased support of licensing activities for new applications and DOE's Title I licensing activities underestimated 10 CFR part 170 collections.

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 2012, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

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

| | |
|---|---|
| DOE Annual Fee Amount (UMTRCA Title I and Title II) general licenses: | |
| UMTRCA Title I budgeted costs less 10 CFR part 170 receipts | $751,298 |
| 10 percent of generic/other uranium recovery budgeted costs | 38,509 |
| 10 percent of uranium recovery fee-relief adjustment | −10,464 |

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS—Continued

| | |
|---|---|
| Total Annual Fee Amount for DOE (rounded) | 779,000 |
| 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 | 346,577 |
| 90 percent of uranium recovery fee-relief adjustment | −94,176 |
| Total Annual Fee Amount for Other Uranium Recovery Licenses | 252,401 |

The DOE fee increases by 1 percent in FY 2012 compared to FY 2011 due to slightly higher budgeted resources for UMTRCA Title I activities. The annual fee for other uranium recovery licensees decreases in FY 2012.

The NRC will continue to use a matrix which is included in the work papers (ADAMS Accession No. ML12040A341) 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 $252,000 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 2012 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ* Recovery (ISR) and resin 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 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 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). The NRC then calculates total and per licensee benefit factors for each fee category. 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

| Fee category | Number of licensees | Benefit factor per licensee | Total value | Benefit factor percent total |
|---|---|---|---|---|
| Conventional and Heap Leach mills (2.(A).2.a.) | 1 | 150 | 150 | 9 |
| Basic *In Situ* Recovery facilities (2.(A).2.b.) | 5 | 190 | 950 | 59 |
| Expanded *In Situ* Recovery facilities (2.(A).2.c.) | 1 | 215 | 215 | 13 |
| *In Situ* Recovery Resin facilities (2.(A).2.d.) | 1 | 180 | 180 | 11 |
| 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 |
| | ..... | ..... | 1,605 | ..... |

Applying these factors to the approximately $252,000 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]

| Facility type (fee category) | FY 2012 Final annual fee |
|---|---|
| Conventional and Heap Leach mills (2.A.(2)(a)) | $23,600 |
| Basic *In Situ* Recovery facilities (2.A.(2)(b)) | 29,900 |
| Expanded *In Situ* Recovery facilities (2.A.(2)(c)) | 33,800 |
| *In Situ* Recovery Resin facilities (2.A.(2)(d)) | 28,300 |
| 11e.(2) disposal incidental to existing tailings sites (2.A.(4)) | 10,200 |
| Uranium water treatment (2.A.(5)) | 7,100 |

c. Operating Power Reactors

The $473.7 million in budgeted costs to be recovered through FY 2012 annual fees assessed to the power reactor class was calculated as shown in Table XIII. The FY 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $783.6 | $781.4 |
| Less estimated 10 CFR part 170 receipts | −320.6 | −295.5 |
| Net 10 CFR part 171 resources | 463.0 | 486.0 |
| Allocated generic transportation | +0.9 | +1.3 |
| Fee-relief adjustment/LLW surcharge | −3.4 | −6.3 |
| Billing adjustments | 0.4 | −7.3 |
| Total required annual fee recovery | 460.9 | 473.7 |

The annual fee for power reactors increase in FY 2012 compared to FY 2011 due to higher fee-relief adjustments/LLW surcharges and billing adjustments compared to FY 2011. 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 an FY 2012 annual fee of $4,555,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2012 spent fuel storage/reactor decommissioning annual fee of $211,000. The total FY 2012 annual fee is $4,766,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning

For FY 2012, budgeted costs of $25.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR 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 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $33.4 | $29.4 |
| Less estimated 10 CFR part 170 receipts | −4.0 | −3.6 |
| Net 10 CFR part 171 resources | 29.4 | 25.8 |
| Allocated generic transportation | +0.5 | +0.7 |
| Fee-relief adjustment | −0.2 | −0.3 |
| Billing adjustments | 0.0 | −0.3 |
| Total required annual fee recovery | 29.7 | 22.9 |

The value of total budgeted resources for this fee class is lower in FY 2012 than in FY 2011, due to decreased budgeted resources for spent fuel storage licensing and certification activities, higher fee-relief surplus and billing adjustment, and underestimated 10 CFR part 170 collections. The required annual fee recovery amount is divided equally among 123 licensees, resulting in an FY 2012 annual fee of $211,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors)

Approximately $139,000 in budgeted costs is to be recovered through annual fees assessed to the research and test reactor class of licenses for FY 2012. Table XV summarizes the annual fee calculation for research and test reactors for FY 2012. The FY 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $1.87 | $1.68 |
| Less estimated 10 CFR part 170 receipts | −1.54 | −1.54 |
| Net 10 CFR part 171 resources | 0.33 | 0.14 |
| Allocated generic transportation | +0.02 | +0.03 |

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR RESEARCH AND TEST REACTORS—Continued

[Dollars in millions]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Fee-relief adjustment | −0.01 | −0.05 |
| Billing adjustments | 0.00 | −0.02 |
| Total required annual fee recovery | 0.35 | 0.13 |

The decrease in annual fees from FY 2011 to FY 2012 is primarily due to decreased budgetary resources for nonbillable power reactors. 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 2012 annual fee of $34,700 for each licensee.

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 2012.

g. Materials Users

For FY 2012, budget costs of $30.4 million for material users are to be recovered through annual fees assessed to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2012 annual fee amount for materials users' licensees. The FY 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $30.0 | $30.6 |
| Less estimated 10 CFR part 170 receipts | −1.6 | −1.6 |
| Net 10 CFR part 171 resources | 28.5 | 29.0 |
| Allocated generic transportation | +1.0 | +1.5 |
| Fee-relief adjustment/LLW surcharge | −0.0 | +0.1 |
| Billing adjustments | −0.0 | −0.2 |
| Total required annual fee recovery | 29.5 | 30.4 |

The total required annual fees to be recovered from materials licensees increase in FY 2012, mainly because of increases in the budgeted resources allocated to this fee class for oversight activities and a higher LLW surcharge partially offset by higher billing adjustments compared to FY 2011. Annual fees for most fee categories within the materials users' fee class increase.

To equitably and fairly allocate the $30.4 million in FY 2012 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 10 CFR 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 × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $22.2 million in general costs (including allocated generic transportation costs) and is 1.58 for FY 2012. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $274. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $8.0 million in inspection costs, and is 2.3 for FY 2012. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2012, approximately $110,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately $282,000 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 $335,000 in LLW surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2012 generic transportation budgeted resources to be recovered through annual fees. The FY 2011 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]

| Summary fee calculations | FY 2011 Final | FY 2012 Final |
|---|---|---|
| Total budgeted resources | $7.5 | $9.2 |
| Less estimated 10 CFR part 170 receipts | −3.4 | −3.4 |
| Net 10 CFR part 171 resources | 4.1 | 5.9 |

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, ''Packaging and Transportation of Radioactive Material.'' 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 2012 budgetary resources for generic transportation activities including those to support DOE CoCs is $5.9 million. The increase in 10 CFR part 171 resources in FY 2012 compared to FY 2011 is primarily due to an increase in budgeted resources for transportation regulatory programs. 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 4 CoCs benefit the entire research and test reactor class, but only 4 of 31 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 (4/31)*4, or 0.5 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2012

[Dollars in millions]

| License fee class/DOE | Number CoCs benefiting fee class or DOE | Percentage of total CoCs | Allocated generic transportation resources |
|---|---|---|---|
| Total | 87.5 | 100.0 | $5.86 |
| DOE | 21.0 | 24.0 | 1.41 |
| Operating Power Reactors | 20.0 | 22.9 | 1.34 |
| Spent Fuel Storage/Reactor Decommissioning | 10.0 | 11.4 | 0.67 |
| Research and Test Reactors | 0.5 | 0.6 | 0.03 |
| Fuel Facilities | 13.0 | 14.8 | 0.87 |
| Materials Users | 23.0 | 26.3 | 1.54 |

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does 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 $1,309,000 for FY 2012. This fee increase from FY 2011 is primarily related to higher budgeted resources for the NRC's transportation activities.

3. Administrative Amendments

This rule makes certain administrative changes for clarity:

a. § 171.16(d), revises fee schedule. Under 10 CFR part 170, the descriptions for categories 14.A. and 14.B. are revised to add the phrase ''including MMLs'' to capture work activities outside of the category 17 description involving decommissioning actions and activities for MML agencies (i.e., U.S. Department of Veterans Affairs, U.S. Navy, U.S. Air Force) and the fees are subject to full cost. This methodology ensures equitable fee distribution among licensees by charging the full cost for services over and above routine oversight activities to specific MMLs while minimizing the financial impact of annual fee distribution for all MMLs for the next biennial review.

b. Identifies ''POL'' under 10 CFR 171.17, ''Proration,'' as ''possession-only-license;'' and

c. Revises the language for clarity under 10 CFR 171.17(a)(3) and (b)(3) for downgraded licenses.

In summary, the NRC makes the following changes to 10 CFR part 171:

1. Uses the NRC's fee-relief surplus to reduce all licensees' annual fees, based on their percentage share of the NRC budget;

2. Establishes rebaselined annual fees for FY 2012; and

3. Makes administrative changes to §§ 171.16 and 171.17.

## IV. Plain Writing

The Plain Writing Act of 2010, (Pub. L. 111–274), requires Federal agencies to write documents in a clear, concise,

well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

## V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

| Document | PDR | Web | ADAMS |
|---|---|---|---|
| FY 2012 Work Papers | X | | ML12150A163 |
| Regulatory Flexibility Analysis | | | ML12046A885 |
| Small Entity Compliance Guide | | | ML12041A317 |
| NUREG–1100, Volume 27, ''Congressional Budget Justification: Fiscal Year 2012'' (February 2011). | X | | ML12137A853 |
| NRC Form 526 | | X | |

## VI. 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 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 2012, as required by the OBRA–90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## VII. 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.

## VIII. 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.

## IX. Regulatory Analysis

Under OBRA–90, as amended, and the Atomic Energy Act of 1954 (AEA), as amended, the NRC is required to recover 90 percent of its budget authority, or $909.5 million in FY 2012. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978 and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA–90 and the AEA.

In this rulemaking, the NRC proposes to continue this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

## X. Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC's regulatory flexibility analysis for this final rule is available as indicated in Section V, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2012 budget authority through the assessment of user fees. The OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2012 final rule establishes the schedules of fees necessary for the NRC to recover 90 percent of its budget authority for FY 2012. This final rule results in some increases in those annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in those annual fees charged to others. Licensees affected by the annual fee increases and decreases include those that qualify as small entities under the NRC's size standards in 10 CFR 2.810.

The NRC prepared a final biennial regulatory analysis in FY 2011, in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). The rule also stated the small entity fees will be reexamined every two years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this final fee rule, small entity fees remain unchanged at $2,300 for the maximum upper-tier small entity fee and $500 for the lower-tier small entity to ease the financial burden for small entities. The next small entity biennial review is scheduled for FY 2013.

Finally, 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. The NRC, in compliance with the law, has prepared the ''Small Entity Compliance Guide,'' which is available as indicated in Section V, Availability of Documents, of this document.

## XI. 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. A backfit analysis is not required because these amendments do not require the modification of, or addition 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.

**XII. 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:** Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 2. 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 $274 per hour.

■ 3. In § 170.21, in the table, the heading for fee category G and fee category K are revised to read as follows:

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

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

| Facility categories and type of fees | Fees [1] [2] |
|---|---|
| * * * * * * * | |
| G. Other Production or Utilization Facility: | |
| * * * * * * * | |
| K. Import and export licenses: | |
| Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110. | |
| 1. Application for import or export of production or utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b). | |
| Application—new license, or amendment; or license exemption request | $17,800. |
| 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 | $9,600. |
| 3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances. | |
| Application—new license, or amendment; or license exemption request | $4,400. |
| 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 | $2,700. |
| 5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities. | |
| Minor amendment to license | $1,400. |

[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.

3 * * * * * * * * *

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

■ 4. 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]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 1. Special nuclear material: | |
| A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities | |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) [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: | |
| 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] | $12,800. |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. | |
| Application [Program Code(s): 03214, 03215, 22135, 22162] | $4,400. |
| 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] | $6,500. |
| D. [Reserved] | N/A. |
| 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). | |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| Application [Program Code(s): 03510, 03520] | $3,200. |
| 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] | $6,400. |
| 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] | $61,200. |
| 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] | $4,300. |
| I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. | |
| Application [Program Code(s): 03250, 03251, 03252, 03253, 03256] | $11,500. |
| J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. | |
| Application [Program Code(s): 03240, 03241, 03243] | $2,000. |
| K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. | |
| Application [Program Code(s): 03242, 03244] | $1,100. |
| 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. | |
| Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613] | $5,400. |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. | |
| Application [Program Code(s): 03620] | $3,500. |
| 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. | |
| Application [Program Code(s): 03219, 03225, 03226] | $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. |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 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 | $7,700. |
| 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 | $10,400. |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. | |
| Application—each source | $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, including MMLs. | Full Cost. |
| B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed. | Full Cost. |
| 15. Import and Export licenses: | |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.). | |
| A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). | |
| Application—new license, or amendment; or license exemption request | $17,800. |
| 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 | $9,600. |
| C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. | |
| Application—new license, or amendment; or license exemption request | $4,400. |
| D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. | |
| Application—new license, or amendment; or license exemption request | $2,700. |
| E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. | |
| Minor amendment | $1,400. |
| 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.). | |
| *Category 1 (Appendix P, 10 CFR part 110) Exports:* | |
| F. Application for export of Appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain one government-to-government consent for this process. For additional consent see 15.I.). | |
| Application—new license, or amendment; or license exemption request | $15,100. |
| G. Application for export of Appendix P Category 1 material requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see 15.I. | |
| Application—new license, or amendment; or license exemption request | $8,800. |
| H. Application for export of Appendix P Category 1 Materials and to obtain one government-to-government consent for this process. For additional consents see 15.I. | |
| Application—new license, or amendment; or license exemption request | $5,500. |
| I. Requests for additional government-to-government consents in support of an export license application or active export license. | |
| Application—new license, or amendment; or license exemption request | $270. |
| *Category 2 (Appendix P, 10 CFR part 110) Exports:* | |
| J. Application for export of Appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)). | |
| Application—new license, or amendment; or license exemption request | $15,100. |
| K. Applications for export of Appendix P Category 2 materials requiring Executive Branch review. | |
| Application—new license, or amendment; or license exemption request | $8,800. |
| L. Application for the export of Category 2 materials. | |
| Application—new license, or amendment; or license exemption request | $5,500. |
| M. [Reserved] | N/A. |
| N. [Reserved] | N/A. |
| O. [Reserved] | N/A. |
| P. [Reserved] | N/A. |
| Q. [Reserved] | N/A. |
| *Minor Amendments (Category 1 and 2, Appendix P, 10 CFR part 110, Export):* | |
| 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. | |
| Minor amendment | $1,400. |
| 16. Reciprocity: | |
| Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20. | |
| Application | $2,300. |
| 17. Master materials licenses of broad scope issued to Government agencies. | |
| Application [Program Code(s): 03614] | Full Cost. |
| 18. Department of Energy. | |
| A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages). | Full Cost. |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities. | Full Cost. |

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for 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.)

## 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

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

**Authority:** Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

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

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

* * * * *

(b)(1) The FY 2012 annual fee for each operating power reactor which must be collected by September 30, 2012, is $4,766,000.

(2) The FY 2012 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 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2012 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 $211,000.

(2) The FY 2012 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 2012 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2012 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 2012 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2012 fee-relief adjustment allocated to the operating power reactor class of licenses is a $6.3 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2012 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a $60,055 fee relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, $6.3 million, by the number of operating power reactors (104).

(3) The FY 2012 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a $331,202 fee-relief surplus. The FY 2012 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 a $2,693 fee-relief surplus. 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 2012 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—$34,700.

Test reactor—$34,700.

■ 7. In § 171.16, paragraph (d) and the introductory text of paragraph (e) are revised to read as follows:

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

* * * * *

(d) The FY 2012 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2012 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2012 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

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

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1] [2] [3] |
|---|---|
| 1. Special nuclear material: | |
| A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities. | |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130] | $6,329,000. |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]. | $2,382,000. |
| (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] | N/A.[5] |
| (b) Gas centrifuge enrichment demonstration facilities | $1,225,000. |
| (c) Others, including hot cell facilities | $612,000. |
| 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] | [11] N/A. |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [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] | $7,300. |
| E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200] | $3,403,000. |
| 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] | $1,293,000. |
| (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] | $23,600. |
| (b) Basic *In Situ* Recovery facilities [Program Code(s): 11500] | $29,900. |
| (c) Expanded *In Situ* Recovery facilities [Program Code(s): 11510] | $33,800. |
| (d) *In Situ* Recovery Resin facilities [Program Code(s): 11550] | $28,300. |
| (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] |

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

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1] [2] [3] |
|---|---|
| (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]. | $10,200. |
| (5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]. | $7,100. |
| B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210] | $1,800. |
| C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810] | $12,400. |
| 3. Byproduct material: | |
| A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213] | $43,500. |
| 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] | $12,400. |
| C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513] | $16,900. |
| 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] | $9,100. |
| 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] | $15,500. |
| 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] | $140,900. |
| 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] | $8,300. |
| I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256] | $20,200. |
| 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] | $4,800. |
| K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, 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] | $3,200. |
| 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] | $14,700. |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620] | $8,700. |
| 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] | $14,900. |
| 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] | $25,900. |
| 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, 3140, 3130, 03220, 03221, 03222, 03800, 03810, 22130] | $4,900. |
| 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]. | $9,000. |
| 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]. | $4,900. |
| S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210] | $15,500. |
| 4. Waste disposal and processing: | |

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

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1] [2] [3] |
|---|---|
| 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] | $32,000. |
| 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] | $14,900. |
| 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 [Program Code(s): 03110, 03111, 03112] | $10,200. |
| 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] | $46,100. |
| 7. Medical licenses: | |
| A. Licenses issued under 10 CFR 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] | $17,900. |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under 10 CFR 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] | $46,100. |
| C. Other licenses issued under 10 CFR 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] | $8,600. |
| 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] | $9,000. |
| 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 | $12,000. |
| 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 | $13,900. |
| 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 | $16,200. |
| 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 10 CFR 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 10 CFR parts 30, 40, 70, 72, and 76 of this chapter, including MMLs | N/A.[7] |
| B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, 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] | $485,000. |
| 18. Department of Energy: | |

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

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1] [2] [3] |
|---|---|
| A. Certificates of Compliance | $1,309,000.[10] |
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities | $779,000. |

[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, 2011, 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 10 CFR 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 2012 fee-relief adjustment are as follows:

* * * * *

8. In § 171.17, paragraphs (a)(2), (a)(3), and (b)(3)(i) are revised to read as follows:

**§ 171.17 Proration.**

* * * * *

(a) * * *

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

(3) *Downgraded licenses.* The annual fee for a materials license with an annual fee of $100,000 or greater for a single fee category for the current FY, that is subject to fees under this part and downgraded on or after October 1 of a FY, is automatically prorated by the agency on the basis of the number of days remaining in the FY when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

(b) * * *

(3) * * *

(i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is automatically prorated on the basis of the date when the application for downgrade is received and approved by the NRC, provided the licensee permanently ceased the stated activities during the specified period.

* * * * *

Dated at Rockville, Maryland, this 5th day of June, 2012.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**

*Chief Financial Officer.*

[FR Doc. 2012–14589 Filed 6–14–12; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–0287; Airspace Docket No. 11–AWP–21]**

**RIN 2120–AA66**

## Amendment of Air Traffic Service Routes; Southwestern United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Jet Route J–2, and VOR Federal airways V–16, V–66 and V–202 in southern Arizona and New Mexico due to the scheduled decommissioning of the Cochise, AZ, VHF Omnidirectional Range Tactical Air Navigation (VORTAC) which currently is used to define segments of the routes.

**DATES:** Effective date 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On April 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish two new RNAV routes in the southwestern United States (78 FR 24156). An NPRM correction published in the **Federal Register** of May 23, 2012 (77 FR 30437) corrected the description of VOR Federal airway V–16.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received which expressed support for the proposal.

### The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the descriptions of Jet Route J–2, and VOR Federal airways V–16, V–66 and V–202 in southern Arizona and New Mexico. The FAA is taking this action due to the scheduled decommissioning of the Cochise, AZ, VORTAC, which is used in the descriptions of the routes. Specifically, the portion of J–2 that extends from Gila Bend, AZ; to Cochise, AZ; to El Paso, TX is realigned to proceed from Gila Bend to Tucson, AZ, and then to El Paso, TX (with the remainder of the route is unchanged). The portion of V–16 that currently extends from Tucson, AZ; to Cochise, AZ; to Columbus, NM, is realigned to proceed from Tucson, AZ; to San Simon, AZ; then to Columbus, NM (remainder of route unchanged). V–66 is modified by removing language that excludes altitudes above 13,000 feet MSL in one segment of the route no longer required by air traffic control. V–202 currently extends from Tucson, AZ; to Cochise, AZ; to San Simon, AZ; to Silver City, NM; to Truth or Consequences, NM. The western portion of V–202 that extends between Tucson-Cochise-San Simon is deleted. The modified V–202 begins at San Simon, AZ; to Silver City, NM; to Truth or Consequences, NM.

Jet Routes are published in paragraph 2004, and Domestic VOR Federal airways are published in paragraph 6010, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Jet Routes and VOR Federal airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Air Traffic Service routes to maintain the continuity of navigation guidance in the southwestern United States.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

*Paragraph 2004 Jet routes.*

**J–2 [Amended]**

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Tucson, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.