

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC-2008-0620]

RIN 3150-AI52

Revision of Fee Schedules; Fee Recovery for FY 2009

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2009, not including amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. The NRC's required fee recovery amount for the FY 2009 budget is approximately \$870.6 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately \$866.5 million.

DATES: *Effective Date:* August 10, 2009.

ADDRESSES: The comments received on the proposed rule and the NRC's work papers that support these final changes to 10 CFR parts 170 and 171 are available from the following locations:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0620. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which

provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Rebecca I. Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-7126, e-mail Rebecca.Erickson@NRC.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Response to Comments
- III. Final Action
 - A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended
 - 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
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Congressional Review Act

I. Background

The NRC is required each year, under OBRA-90 (42 U.S.C. 2214), as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The NRC receives 10 percent of its budget authority (not including non-fee items) from the general fund each year to pay for the cost of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities (as defined under section 274 of the Atomic Energy Act of 1954, as amended).

The NRC assesses two types of fees to meet the requirements of OBRA-90. First, user fees, set forth in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701), recover the NRC's cost of providing special benefits to identifiable applicants and

licensees. For example, the NRC assesses these fees to cover the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, set forth in 10 CFR part 171 under the authority of OBRA-90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees.

In accordance with OBRA-90, \$27.1 million of the agency's budgeted resources for generic homeland security activities are excluded from the NRC's fee base in FY 2009. These funds cover generic activities, such as rulemakings and the development of guidance documents, that support entire license fee classes or classes of licensees. Under its IOAA authority, the NRC will continue to charge part 170 fees for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.

On March 11, 2009, the President signed the Omnibus Appropriations Act, 2009 (Pub. L. 111-8). This Act appropriated \$1,045,516,000 to the NRC to carry out its mission in FY 2009. This amount is \$24.3 million lower than the estimate used to develop the FY 2009 proposed rule (74 FR 9129; March 2, 2009). The FY 2009 proposed rule was based on the FY 2009 Energy and Water Development Appropriations Bill (H.R. 7324), reported by the U.S. House of Representatives Appropriations Committee. As discussed in the Statement of Consideration of the FY 2009 proposed rule, the NRC's FY 2009 final fee rule has been adjusted to reflect the enacted budget. However, because the \$24.3 million decrease only affected the amount appropriated from the NWF, which is a non-fee item, the NRC's required fee recovery amount for the FY 2009 budget has not changed from the proposed fee rule.

The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. In FY 2009, the NRC's total fee recovery amount has increased by \$91.5 million from FY 2008, mostly in response to an increased regulatory and infrastructure support workload for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facilities, and materials licensing. The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the annual fees for reactor, fuel facility, most uranium recovery, and small materials licensees have increased. Another factor affecting the amount of annual fees for each fee class is the estimated collection under part 170. The

annual fee amounts in the FY 2009 final fee rule are lower for most fee categories than those in the proposed rule primarily due to the increase in part 170 revenue estimates.

II. Response to Comments

The NRC published the FY 2009 proposed fee rule on March 2, 2009 (74 FR 9129) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received eight comments by the close of the comment period (April 1, 2009) and two comments thereafter, for a total of 10 comments that were considered in this fee rulemaking. The comments have been grouped by issue and are addressed in a collective response.

A. Specific Part 170 Issue

1. Hourly Rate Increase

Comment. Several commenters were concerned about the increase in the NRC's hourly rate. These commenters requested a better explanation for the 19 percent increase in the cost of agency administrative overhead and the 10 percent increase in the cost of salaries and benefits for mission direct full-time equivalents (FTE) from FY 2008 to FY 2009. Some commenters also noted that NRC's hourly rates have always exceeded those charged by private firms for similar work.

Response. The NRC's hourly rate is based on budgeted costs and must be established each year to meet the NRC's fee recovery requirements. As discussed in the proposed rule, the increase in the hourly rate is due to the higher budget necessary for an increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities. The increase in the agency's regulatory activities requires a comparable increase in agency administrative support (*e.g.*, rent, supplies, and information technology). The 10 percent increase in the cost of salaries and benefits is primarily due to an increase of 101 mission direct FTEs in FY 2009 as compared with FY 2008 along with Government-wide pay raises. The FTE increase reflects additional support for new facility applications.

In response to comments that the NRC hourly rate is significantly higher than private industry rates, the NRC's rate is calculated to recover all of the budgeted costs supporting the services provided under part 170, including all programmatic and agency overhead, which is consistent with the full cost recovery concept emphasized in the Office of Management and Budget's

Circular No. A-25, "User Charges." The NRC did not receive any comments suggesting ways to revise its hourly rate calculation methodology, and comments on this fee rule and other rulemakings have consistently supported the NRC's efforts to collect more of its budget through part 170 fees-for-services rather than part 171 annual fees. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2009 proposed rule.

2. Multiple Hourly Rates

Comment. One commenter requested that the NRC consider developing different hourly rates to account for the more complex licensing tasks of new licensed facilities as opposed to the routine work required for well-established programs.

Response. From FY 1988 through FY 1994, the NRC used one agency-wide professional hourly rate. In the FY 1995 fee rule (60 FR 32218; June 20, 1995), the NRC replaced the single rate with two professional hourly rates based on "cost center concepts" used for budgeting purposes to separately, and more equitably, allocate the costs associated with the reactor and materials programs. In the FY 2007 fee rule (72 FR 31401; June 6, 2007), the NRC returned to the use of one hourly rate. The NRC found that there was no longer a significant difference in the two hourly rates. Also, the NRC incurs administrative burden in calculating and billing two different hourly rates.

As stated in the previous response, the NRC's hourly rate is based on budgeted costs and must be calculated each year to meet the agency's fee recovery requirements. The NRC believes that the added burden from requiring both mission direct and administrative staff to develop and provide annual review and oversight of a multiple hourly rate schedule would be counterproductive. In addition, there is not a significant difference in the NRC budget for the various programs that would result in different hourly rates. Therefore, the NRC is retaining the single hourly rate as presented in the FY 2009 proposed rule.

3. Fee Category 17 Description Revisions

Comment. One commenter requested that NRC rescind the revision to the description of fee category 17, "master materials licenses of broad scope issued to Government agencies and other entities," as stated in the proposed rule. This commenter stated that it understands and supports the NRC's need to meet its fee recovery responsibilities, but believes adequate

notice should be given to impacted licensees as required under the Administrative Procedure Act. This commenter also noted that the addition of the phrase "and other entities" to the description of fee category 17 and further elaboration that this category is being expanded to include non-governmental entities with multi-site licenses did not clearly indicate that certain fee category 3.C. entities would now fall under fee category 17.

Response. The NRC's intent in revising the description of fee category 17 was to enhance the fairness and equity of its fee schedule. The data gathered for the FY 2009 biennial review of fees showed that the NRC's review efforts for large non-Federal multi-site, multi-region licenses under fee category 3.C. were similar to efforts for a Master Materials License (MML) (fee category 17) and, thus, there should be similar fees. However, NRC appreciates the concerns raised by this commenter. To address these concerns, NRC will rescind the proposed revision to the description for fee category 17 (MML). The NRC believes it is necessary to perform additional studies of the best way to equitably recover the costs of providing the regulatory oversight for multi-site licenses and such review will be addressed in a future rulemaking. The impact of removing the revised description from this final rule on fee categories 3.C. and 17 is discussed in Sections III.A.2, of this document, Flat Application Fee Changes, and III.B.3.g, Materials Users.

B. Specific Part 171 Issues

1. Increase in Annual Fee Base

Comment. Some commenters requested a more detailed explanation for the bases for the increase in annual fees as opposed to an increase in the NRC hourly fee charges. The commenters recognized that additional fees are necessary to support increases in NRC staffing levels and the agency infrastructure required to license new facilities, but the commenters expected a larger percentage of the increase to be recovered through hourly fee charges.

Response. As a matter of policy, the NRC strives to maximize its fee collections under part 170, and this has been addressed in previous fee rules. The NRC is rebaselining its fees in FY 2009, as noted in the proposed fee rule. Under this methodology, the agency's annual fee amounts are calculated based on budgeted resources allocated to the fee class and may fluctuate from one year to the next. In FY 2009 the NRC budget amount to be recovered increased by 14 percent. This is

reflected in the increase in annual fees for most licensees.

Because NRC's annual fees must recover all fee class resources not collected through part 170 fees, the annual fees are also affected by the part 170 fees collected from that fee class. The NRC prepares its budget using the best information available at the time, including scheduled application and licensing activities. However, part 170 revenue from a fee class is particularly difficult to predict in advance. Although the total part 170 revenue in FY 2009 is greater than FY 2008, fact-of-life issues, such as delays in application activities and restrictions in a six-month continuing resolution, resulted in lower than expected part 170 estimated revenues for some classes of licensees like fuel facilities. In addition, most of the FY 2009 part 170 revenue is billed at the lower FY 2008 professional hourly rate of \$238 because the higher FY 2009 rate of \$257 is not effective until 60 days after the publication of this final rule in the **Federal Register**. This has resulted in annual fee increases higher than the increase in total budget to be recovered for some licensees.

2. Fuel Facilities Annual Fees

Comment. One commenter was concerned about the increase in annual fees for fee category 1.A.(1)(a), High Enriched Uranium Fuel (HEU), and requested that NRC re-evaluate the matrix used in determining the Fuel Facilities annual fees. In particular, this commenter believes that the annual fee for fee category 1.E., Uranium Enrichment, should have a higher percentage increase because the NRC stated that the primary reason for the Fuel Facilities budget increase was for new uranium enrichment facility licensing activities. The commenter then asserted that the proposed annual fee increase for an HEU facility was unjustified because the NRC said that the effort factors for the HEU fee category have decreased from FY 2008. Another commenter did not believe that the annual fee increase for a Low-Enriched Uranium Fuel Facility was justified and wanted the NRC to provide further explanation.

Response. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. The NRC acknowledges that the annual fees for fuel facilities increased by a large percentage (between 56 percent and 124 percent) from FY 2008 to FY 2009. However, the annual fees decreased approximately 27 percent from FY 2007 to FY 2008. The licensing activities for the new uranium enrichment facility are

not included in the annual fee for a specific facility licensed by the NRC. The NRC bills the applicant for these activities as part 170 hourly charges. The delay in the submission of the license application impacted the part 170 fee estimate for fuel facilities. Because annual fees must recover all budgeted resources for a fee class not recovered through part 170 fees, annual fees for all facilities in the fee class are impacted by the lower part 170 fee estimate, as explained in the answer to the previous comment.

In response to the request to re-evaluate the matrix used for calculating annual fees for individual fuel facilities, the NRC established its methodology through public notice and comment rulemaking (64 FR 31448; June 10, 1999). Under this methodology the total budgeted resources for fuel facilities are allocated to individual fuel facility fee categories based on the effort/fee determination matrix, which was described in detail in the FY 2009 proposed fee rule. As stated in the FY 1999 rulemaking, 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. The NRC continues to believe that an effort/fee determination matrix, based on the commensurate level of regulatory effort related to the various fuel facility categories from a safety and safeguards perspective, results in annual fees that accurately reflect the current costs of providing generic and other regulatory services to each fuel facility type. In response to the comment on the decrease in effort factors for HEU fee category, the 2.6 percent decrease in the total safety and safeguards effort factor change is relatively small, as noted in the proposed rule. The primary reason for the increase in annual fees is the higher budget without a proportionate increase in part 170 revenue. The decrease in total effort factors for HEU fee category did not have a large impact on the annual fee. Therefore, the NRC is retaining the effort/fee determination matrix as outlined in the proposed rule.

3. Uranium Recovery Annual Fees

Comment: One commenter, representing various stakeholders, stated that the proposed rule did not adequately explain the substantial increase in FY 2009 annual fees for in-situ recovery (ISR) operations and conventional mills from the \$10,300 [corrected] annual fee in FY 2008. This commenter was also concerned that contrary to the uranium recovery industry's expectations, the preparation

of the Generic Environmental Impact Statement (GEIS) for in-situ uranium recovery has not decreased NRC staff effort. This commenter supported the creation of three new classes of uranium recovery licenses as presented in the proposed rule, but requested the addition of a statement in the final rule to clarify that conventional mills will not be double-billed as a resin toll milling facility under fee category 2.A.(2)(e) if their license allows them to process uranium bearing resins from other sites and sources. Another commenter stated that the proposed fee rule did not adequately explain the basis for the Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I budgeted costs. This commenter worried that reductions in generic fees would result in reduced NRC support for UMTRCA license actions and requested site-specific budget details in the final rule and supporting documents.

Response. The NRC acknowledges that the FY 2009 uranium recovery annual fees for in-situ recovery operations and conventional mills fee classes of \$29,700 and \$31,200, respectively, are significantly higher than the FY 2008 annual fee of \$10,300 charged to these facilities. However, the annual fees charged to these facilities have decreased substantially since FY 2006 when the annual fee was \$65,900. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. The increase in the total required annual fee recovery is mainly due to an increase in uranium recovery licensing and inspection budget resources for the existing licensees, as stated in the proposed rule. The NRC's annual fees reflect the budgeted cost of its regulatory services to the class.

In response to the request for clarification in the fee schedule to avoid the possibility of double-billing, most NRC materials licenses that authorize more than one activity on a single license will be assessed annual fees for each category applicable to the license (see § 171.16, footnote 1, of this document). Thus, if an NRC license authorizes the operation of both a conventional mill and a resin toll milling facility then annual fees will be assessed for both fee category 2.A.(2)(a), Conventional Mills, and 2.A.(2)(e), Resin Toll Milling Facilities. As described in the proposed rule, each fee category for uranium recovery facilities reflects the NRC's regulatory effort expended for the different types of facilities, both existing and planned. Consistent with requirements under OBRA-90, the NRC believes the annual

fees have a reasonable relationship to the cost of its regulatory services to each fee category. Therefore, the final rule provides no exceptions.

In response to comments on budgeted resources for specific uranium recovery activities, the NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned activity in each of the agency's major program areas. The NRC's Performance Budget submitted to the Congress for review provides the objectives of the budget and how it supports the agency's Strategic Plan goals and strategies. Nonetheless, the NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' concerns regarding the NRC's budget and the use of NRC resources for specific activities, such as the GEIS and UMTRCA.

4. Agreement State Activities

Comment. Some commenters requested more discussion of the fee impact on NRC licensees once additional states beyond the Commonwealth of Virginia and the State of New Jersey become Agreement States. One commenter worried that they would be required to pay fees to both the NRC and the Commonwealth of Virginia. This commenter also suggested that NRC consider implementing monthly billing for seasonal usage whereby the licensee would only be charged for the months during which the equipment was used.

Response. In response to concerns about decreasing numbers of NRC licensees as more states become Agreement States, the NRC notes that the fee calculation methodology considers the percentage of licensees in Agreement States in establishing fees for the materials users fee class. As explained in the proposed fee rule, the budgeted resources providing support to Agreement States or their licensees are included in total fee-relief costs, which are offset by non-fee recovery funding provided by Congress. For example, if the NRC develops a rule, guidance document, or a tracking system that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the fee-relief activities according to the percentage of licensees in that fee class in Agreement States (e.g., if 85 percent of materials users licensees are in Agreement States, 85 percent of these regulatory infrastructure costs are included in the fee-relief category). To address fairness and equity concerns

associated with licensees paying for the cost of activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount to 90 percent beginning in FY 2005. To the extent that the 10 percent of NRC's budget authority which is not fee recoverable is insufficient to cover the total cost of all fee-relief activities, these remaining costs are spread to all licensees based on their percentage of the budget. In FY 2009, the NRC's fee relief exceeds the total fee-relief activities cost. This excess fee relief is used to reduce licensees' annual fees, based on their percentage of the fee recoverable budget authority.

In response to the comment about paying fees to both NRC and the Commonwealth of Virginia, the proposed fee rule explained that, because of Virginia's effective Agreement date of March 31, 2009, the licensees transferring to Virginia are subject to one-half of their NRC annual fee for FY 2009. In response to the comment suggesting a monthly charge to account for seasonal usage, the NRC recognizes the assessment of fees to recover the agency's costs may result in a financial hardship for some licensees. However, the annual fees are based on the budgeted resources for activities such as licensing and inspection and the level of effort to perform these activities. The NRC does not believe that seasonal usage of equipment should be a factor in determining annual fees. Therefore, the NRC will continue to charge an annual fee to its licensees.

C. Other Issues

1. The NRC Budget and Explanation of Increases

Comment. Several commenters stated that the proposed rule did not adequately explain the increase in NRC's total fee recovery for FY 2009 and they felt that the NRC should provide a plan for controlling and limiting the rate of future budget increases. While the commenters recognized and supported NRC's hiring effort in the past five years in response to an increase of new licensees in several fee categories, they believe the proposed rule should have provided a more detailed explanation and justification for the fee increases.

Response. The NRC appreciates the importance of developing cost-efficient budgets. NRC offices conduct process reviews every year and rely on risk-informed practices to develop cost-efficient budgets that allow them to achieve the NRC's Strategic Plan mission objectives. As discussed

previously, the NRC's budget is submitted to OMB and Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for the NRC to carry out its statutory obligations. In compliance with OBRA-90, NRC's fees are calculated to recover the required percentage of its approved budget. The NRC will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

2. Need for Timely Budget Estimate

Comment. Some commenters raised concerns that the timing of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. To address this issue, these commenters suggested that the NRC hold an annual public meeting for the purpose of sharing fee projection information. The commenters recognized NRC's efforts in providing information to the industry through an October 2008 public meeting but requested that an annual public meeting be held earlier in the year to align with their budget planning cycle. In addition, some commenters worried about the unpredictability of estimating proposed fee increases. One commenter recommended NRC publish advance notice of the NRC's next fiscal year budget during the first half of the current calendar year. Another commenter did not believe the NRC adequately communicated the impact of its budget increases to NRC licensees when the proposed FY 2009 budget was released to Congress. Some commenters recommended that the NRC improve its methods of communicating monthly inspection costs.

Response. The NRC appreciates the concerns about fee predictability and stability, and strives to notify licensees of proposed fee changes as early as possible. The Commission also makes every effort to issue the proposed fee rule as soon as possible. Unfortunately, the NRC cannot precisely estimate its budget in advance, as much of the process is out of the agency's direct control. The NRC's proposed budget is submitted to the Office of Management and Budget for executive review before the President submits a budget to Congress, which often makes changes before approving the final budget for the President's signature. As was noted at the October 2008 public meeting, the NRC is committed to open communication within the confines of the rulemaking process, but the agency cannot provide predecisional policies or certain administrative fee-related

information until the proposed fee rule is published. However, the NRC agrees to hold an annual public meeting with interested licensees to share projected fee information as the commenters suggested. The date of the meeting will be determined annually, taking into consideration the timing of the budget process and NRC staff availability.

In response to suggestions that the agency improve its methods of communicating monthly inspection costs, the NRC appreciates the concerns regarding invoice predictability. Nonetheless, providing estimated monthly inspection costs before invoicing is not within the scope of this rulemaking and will not be addressed in this final rule.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2009 budget authority minus the appropriations for non-fee items. The NRC's total budget authority for FY 2009 is \$1,045.5 million. The non-fee items include \$49 million appropriated from the NWF, \$2 million for WIR activities, and \$27.1 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC must recover approximately \$870.6 million in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2009 is \$91.5 million more

than the amount estimated for recovery in FY 2008, an increase of approximately 12 percent.

The FY 2009 fee recovery amount of \$870.6 million is reduced by \$4.1 million to account for billing adjustments (*i.e.*, for FY 2009 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2009 for prior year invoices). This leaves approximately \$866.5 million to be billed as fees in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2009. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2009

[Dollars in millions]

Total Budget Authority	\$1,045.5
Less Non-Fee Items	– 78.1
Balance	\$967.4
Fee Recovery Rate for FY 2009	× 90.0%
Total Amount to be Recovered for FY 2009	\$870.6
Less Part 171 Billing Adjustments:	
Unpaid FY 2009 Invoices (estimated)	1.9
Less Payments Received in FY 2009 for Prior Year Invoices (estimated)	– 6.0
Subtotal	– 4.1
Amount to be Recovered Through Parts 170 and 171 Fees	\$866.5
Less Estimated Part 170 Fees	– 333.9
Part 171 Fee Collections Required	\$532.6

The NRC added six updates to the FY 2009 fee calculations since the proposed rule. First, the agency updated the Part 171 Billing Adjustments based on the latest information available. The estimated payments received in FY 2009 for prior year invoices decreased by approximately \$1.7 million, resulting in a greater amount to be recovered through fees. Second, the NRC updated the part 170 estimates based on the latest billing data available, adding adjustments to account for changes in the budget, as appropriate. In total, the part 170 estimates increased by approximately \$13.7 million. The NRC estimates that \$333.9 million will be recovered from part 170 fees in FY 2009, which represents an increase of approximately 20 percent compared to the \$277.3 million in part 170 collections during FY 2008. Part 171 annual fees account for the remaining \$532.6 million to be recovered in FY 2009, an increase of approximately 13 percent compared to the \$472.9 million in part 171 collections during FY 2008. Third, the NRC lowered the amount of

resources for generic decommissioning (fee-relief) and correspondingly increased resources for the uranium recovery fee class. These changes more accurately allocate budgeted resources. Fourth, in response to a commenter's concerns, the NRC has not changed the definition for fee category 17. Fifth, the NRC corrected the "Flat" application fee for fee category 17, Master Materials License (MML). The proposed rule listed an application fee of \$29,900, which was incorrect. The correct amount is \$60,100, as shown in the proposed rule work papers. Sixth, the NRC adjusted the average number of professional staff hours needed to complete inspection actions for fee categories 3C and 17, and to complete licensing actions for fee category 17. This adjustment takes into account the unchanged definition for fee category 17.

The impact of these updates on the FY 2009 fees is minimal. Fees for most licensees decreased between the FY 2009 proposed and final fee rules. The two most significant changes were: (1) A

30 percent decrease in the test and research reactor annual fee, which resulted from an increase in estimated part 170 fee collections for this fee class; and (2) a 144 percent increase in the "Flat" application fee for fee category 17, which resulted from a correction to the proposed fee amount and an adjustment to the average number of professional staff hours. Other fees decreased or increased by small amounts as a result of the changes listed in the preceding paragraph.

The FY 2009 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 2009 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors, part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more, upon publication of the FY 2009 final rule. For these licensees, payment is due on the effective date of the FY 2009 final rule. Because these licensees are billed

quarterly, the payment due is the amount of the total FY 2009 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 2009 falls before the effective date of the FY 2009 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2008 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2009 final rule will be billed for the annual fee at the FY 2009 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC will not routinely mail the FY 2009 final fee rule or future final fee rules to applicants or licensees. The NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of the Controller, Office of the Chief Financial Officer, at 301-415-7554, or e-mail fees.resource@nrc.gov. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at <http://www.regulations.gov> [NRC Docket ID NRC-2008-0620].

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

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

The NRC is establishing a single hourly rate of \$257 to recover the full cost of activities under part 170, and using this rate to calculate "flat" application fees. The rule also makes revisions to descriptions of some fee categories.

The NRC is making the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is increasing the FY 2009 hourly rate to \$257. This rate is applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. The FY 2009 hourly rate is higher than the hourly rate of \$238 in the FY 2008 final fee rule. The increase is primarily due to the higher FY 2009 budget, which accounts for an increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities. The

hourly rate calculation is described in further detail in the following paragraphs.

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

In FY 2009, the NRC is using 1,371 hours per direct FTE, the same as in FY 2008, 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 updates for the FY 2009 fee rule. Based on its review of the most recent data, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all non-direct activities, such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. (Individual values may not sum to totals due to rounding.)

TABLE II—FY 2009 HOURLY RATE CALCULATION

Mission Direct Program Salaries & Benefits	\$322.0
Mission Indirect Salaries & Benefits, and Contract Activity	129.2M
Agency Management and Support, and IG	316.5M
Subtotal	767.7M
Less Offsetting Receipts	– 0.1M
Total Budget Included in Hourly Rate	\$767.6M
Mission Direct FTEs	2,180
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	\$257

As shown in Table II, dividing the \$767.6 million budgeted amount (rounded) included in the hourly rate by total mission direct FTE hours (2,180 FTE times 1,371 hours) results in an hourly rate of \$257. The hourly rate is rounded to the nearest whole dollar.

2. "Flat" Application Fee Changes

As noted above, the NRC is adjusting the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of \$257. 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 2009.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officers Act of 1990. The NRC conducted this biennial review for the FY 2009 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2009 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in

others to more accurately reflect current data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2007 final fee rule. Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

The higher hourly rate of \$257 is the main reason for the increases in the application fees. Application fees for some fee categories (2.B., 3.G., 3.O., 3.R.1., 4.B., 5.A., 8.A., 9.C., and 17 under § 170.31) also increase because of the results of the biennial review, which

showed an increase in average time to process these types of license applications. The decrease in fees for six fee categories (3.C., 3.H., 3.S., 9.A., 9.B., and 10.B. under § 170.31) is due to a decrease in average time to process these types of applications. As noted earlier, the application fee for fee category 17, Master Materials License (MML) was incorrect in the proposed rule. The correct proposed rule amount is \$60,100, as shown in the proposed rule work papers.

In light of concerns raised by a commenter, the proposed change to the definition for fee category 17 is rescinded in this final rule (see Section II.A.3., Response to Comments, of this document). Therefore, the NRC revised the biennial review resulting in a higher average number of professional staff hours needed to complete new MML licensing actions. This increased the MML application fee by approximately 22 percent compared to the proposed rule corrected fee amount. Additional discussion is provided in Section III.B.3.g, Materials Users, of this document.

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., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2009 final fee rule will be subject to the revised fees in the final rule.

3. Fee Category Changes

The NRC is revising the fee categories for uranium recovery facilities in § 170.31. The new fee categories better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion follows in Section III.B.3.b. Uranium Recovery Facilities, of this document.

In addition, the NRC is revising the description for fee category 7.A. in § 170.31. The NRC is amending fee category 7.A., related to medical licenses, to more precisely state which

medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category in accordance with NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices. The new fee category description does not represent any additions to the types of licenses regulated by NRC. The change clarifies the types of licenses covered under specific categories for NRC licensees.

In light of concerns raised by a commenter, the NRC is not revising the description for fee category 17 in § 170.31.

4. Administrative Amendments

In response to a number of questions on specific sub-sections related to fee exemptions for special projects, the NRC is simplifying § 170.11 for ease of reading. There is no change to the NRC's fee exemption policy.

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

1. Establish revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the proposed FY 2009 hourly rate;
3. Revise some fee categories to better reflect NRC's regulatory effort; and
4. Make certain administrative changes for purposes of clarification.

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

The NRC is using its fee relief to reduce all licensees' annual fees and changes in the number of NRC licensees. This rulemaking also establishes rebaselined annual fees based on the NRC's FY 2009 budget authority. The final amendments are described as follows:

1. Application of "Fee-Relief/Surcharge"

The NRC is using its fee relief to reduce all licensees' annual fees, based on their percent of the budget.

The NRC applies the 10 percent of its budget that is excluded from fee

recovery under OBRA-90 (fee relief), to offset the total budget allocated for activities which do not directly benefit current NRC licensees. The budget for these fee-relief activities are totaled, and then reduced by the amount of the NRC's fee relief. Any remaining fee-relief activities budget is allocated to all licensees' annual fees, based on their percent of the budget (*i.e.*, over 80 percent is allocated to power reactors each year).

In FY 2009, the NRC's 10 percent fee relief exceeds the total budget for fee-relief activities by \$3.2 million. In FY 2008, the 10 percent fee relief exceeded the total budget by \$8.9 million. The excess fee relief in FY 2009 is lower compared with FY 2008, primarily due to higher FY 2009 budget resources for Agreement States support and international activities.

The excess fee relief for the FY 2009 final rule increased by approximately \$0.3 million compared with the proposed rule primarily due to a change in the costs not recovered from the small entities under 10 CFR 171.16(c) and generic decommissioning/reclamation fee-relief costs. The amounts in these fee-relief categories decreased from the proposed rule due to an increase in part 170 revenue estimate for the materials users fee class and a change resulting in a smaller budget resource allocation for generic decommissioning activities related to uranium recovery sites.

As in FY 2008, the NRC is using the \$3.2 million fee relief to reduce all licensees' annual fees, based on their percent of the fee recoverable budget authority. This is consistent with the existing fee methodology, in that the benefits of the NRC's fee relief are allocated to licensees in the same manner as deficit was allocated as surcharge when the NRC did not receive enough fee relief to pay for fee-relief activities. In FY 2009, the power reactors class of licensees will receive approximately 88 percent of the fee relief based on their share of the NRC fee recoverable budget authority.

The FY 2009 budgeted resources for NRC's fee-relief activities are \$93.5 million. The NRC's total fee relief in FY 2009 is \$96.7 million, leaving \$3.2 million in fee relief to be used to reduce all licensees' annual fees. These values are shown in Table III. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES
[Dollars in millions]

	FY 2009 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$17.6
b. Agreement State oversight	11.2
c. Scholarships and Fellowships	15.0
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	11.5
b. Costs not recovered from small entities under 10 CFR 171.16(c)	3.7
c. Regulatory support to Agreement States	17.5
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	13.6
e. In situ leach rulemaking and unregistered general licensees	3.5
Total fee-relief activities	93.5
Less 10 percent of NRC's FY 2009 total budget (non including non-fee items)	– 96.7
Fee Relief to be Allocated to All Licensees' Annual Fees	\$– 3.2

Table IV shows how the NRC is allocating the \$3.2 million in fee relief to each license fee class. As explained previously, the NRC is allocating this fee relief to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee relief is used to partially

offset the required annual fee recovery from each fee class.

Separately, the NRC has continued to allocate the low-level waste (LLW) surcharge based on the volume of LLW disposal of three classes of licenses, operating reactors, fuel facilities, and materials users. Table IV also shows the

allocation of the LLW surcharge activity. Because LLW activities support NRC licensees, the costs of these activities are not offset by the NRC's fee relief. For FY 2009, the total budget allocated for LLW activity is \$2.3 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ACTIVITIES AND LLW SURCHARGE

	LLW Surcharge		Fee-Relief		Total
	Percent	\$M	Percent	\$M	\$M
Operating Power Reactors	54.0	1.2	88	– 2.8	– 1.6
Spent Fuel Storage/Reactor Decommissioning			2.5	– 0.1	– 0.1
Test and Research Reactors			0.1	0.0	0.0
Fuel Facilities	15.0	0.3	5.2	– 0.2	0.2
Materials Users	31.0	0.7	3.0	– 0.1	0.6
Transportation			0.4	0.0	0.0
Uranium Recovery			0.8	0.0	0.0
Total	100.0	2.3	100.0	– 3.2	– 0.9

In FY 2009, the LLW surcharge exceeded the fee relief for two fee classes, fuel facilities and materials users. The net surcharge will be included in the annual fee for fuel facility and materials users licensees.

2. Agreement State Activities

By letter dated June 12, 2008, Governor Timothy Kaine of the Commonwealth of Virginia requested that the NRC enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954. The NRC approved the request. This resulted in the transfer of approximately 386 licenses from the NRC to the Commonwealth of Virginia effective March 31, 2009.

Note that the continuing costs of oversight and regulatory support for the

Commonwealth of Virginia, as for any other Agreement State, are recovered as fee-relief activities consistent with existing policy. The budgeted resources for the regulatory support of Agreement State licensees are prorated to the fee-relief activity based on the percent of total licensees in Agreement States. The NRC has updated the proration percentage in its fee calculation to make sure that resources are allocated equitably between the NRC materials users fee class and the regulatory support to Agreement States fee-relief category. Accordingly, as a result of the Commonwealth of Virginia becoming an Agreement State, the NRC has increased the percentage of materials users regulatory support costs prorated to the fee-relief activity from 82 percent in FY 2008 to 85 percent in FY 2009. The

resources for licensing and inspection activities supporting NRC licensees in the materials users fee class are not prorated to the fee-relief activity.

The number of NRC materials users licensees has been updated to reflect the transfer of licensees to the Commonwealth of Virginia. Because of the effective date of March 31, 2009, the approximately 386 licensees transferring to the Commonwealth of Virginia will be subject to one-half of their annual fee for FY 2009. The number of materials users licensees is revised to reflect that the NRC will still collect one-half of the annual fee from these licensees.

This is not a substantive policy change, but rather a calculation change that will result in a more accurate estimate of the actual costs of supporting Agreement State activities.

Also, Governor Jon Corzine of the State of New Jersey has by letter dated October 16, 2008, formally requested that the NRC enter into an Agreement with his state. If approved by the Commission, this Agreement is expected to take effect by September 30, 2009. Approximately 500 NRC licensees will be transferred to the State of New Jersey. Because the expected effective date is September 30, 2009, these licensees will be assessed annual fees by NRC for the full year of FY 2009. Therefore, no changes to the FY 2009 fees or the number of NRC licensees have been made for this potential event.

3. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2009 to recover approximately 90 percent of the NRC's FY 2009 budget authority after subtracting the non-fee amounts and the estimated amount to be recovered through part 170 fees. The part 170 estimate for this final rule increased by approximately \$13.7 million from the proposed fee rule based on the latest available invoice data. The total amount to be recovered through annual fees for FY 2009 is decreased to \$532.6 million compared with \$544.6 million in the proposed fee rule primarily due to the increase in the part 170 estimate. The

required annual fee collection in FY 2008 was \$468.9 million.

The Commission has determined (71 FR 30733; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that most years there will be budget and other changes that warrant the use of the rebaselining method.

As compared to FY 2008 annual fees, rebaselined fees are higher for three classes of licensees (power reactors, non-power reactors, and fuel facilities) and lower for spent fuel storage/reactor decommissioning licensees. There is no change in rebaselined fees for the transportation fee class. Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The NRC's total fee recoverable budget, as mandated by law, has increased by approximately \$92 million in FY 2009 as compared to FY 2008. Much of this increase is for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facility applications, and materials licensing.

The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the final annual fees for operating reactor, non-power reactor, fuel facility, most uranium recovery and small materials licensees increase. Also in FY 2009, generic NRC resources supporting new uranium recovery applications are included in the budget allocated to operating power reactors and fuel facility fee classes. This is because these licensees will potentially benefit from increased production of uranium milled by new uranium recovery facilities. The impact of this allocation on the operating reactors and fuel facilities annual fees is less than one percent.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2009), the estimated part 170 collections for the various classes of licenses, and allocation of the fee relief to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained unchanged at 10 percent from FY 2008 to FY 2009.

Table V shows the rebaselined annual fees for FY 2009 for a representative list of categories of licenses. The FY 2008 fee is also shown for comparative purposes.

TABLE V—REBASELINED ANNUAL FEES FOR FY 2009

Class/category of licenses	FY 2008 annual fee	FY 2009 final annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	\$4,167,000	\$4,625,000
Spent Fuel Storage/Reactor Decommissioning	135,000	122,000
Test and Research Reactors (Non-power Reactors)	76,500	87,600
High Enriched Uranium Fuel Facility	3,007,000	4,691,000
Low Enriched Uranium Fuel Facility	899,000	1,649,000
UF ₆ Conversion Facility	589,000	969,000
Conventional Mills	10,300	31,200
Typical Materials Users:		
Radiographers (Category 3O)	11,100	22,700
Well Loggers (Category 5A)	3,400	9,700
Gauge Users (Category 3P)	2,100	3,700
Broad Scope Medical (Category 7B)	22,900	36,300

The work papers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2009 budgeted FTE and contract dollars allocated to each fee class and fee-relief category at the planned activity and program level, and compare these allocations to those used to develop the final FY 2008 fees. The work papers are available electronically as stated in the ADDRESSES section of this document.

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

a. Fuel Facilities

The FY 2009 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and

2.A.(1), under § 171.16] is approximately \$23 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170 collections and adjusted for allocated generic transportation resources, and fee relief. In FY 2009, the LLW surcharge for fuel facilities exceeds the allocated fee-relief (see Table IV in Section III.B.1., Application of Fee Relief/Surcharge, of this document). The summary calculations used to derive

this value are presented in Table VI for FY 2009, with FY 2008 values shown for comparison.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES
[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	\$31.5	\$44.6
Less estimated part 170 receipts	– 17.2	– 22.0
Net part 171 resources	\$14.3	\$22.6
Allocated generic transportation	+0.5	+0.4
Allocated fee relief	– 0.1	+0.2
Billing adjustments	– 0.8	– 0.2
Total required annual fee recovery	\$13.9	\$23.0

The increase in FY 2009 total budgeted resources allocated to this fee class compared with FY 2008 is primarily due to increases in resources for new uranium enrichment facility licensing activities partially offset by a higher part 170 revenue estimate. The part 170 revenue estimate for the FY 2009 final rule increased by approximately one percent compared with the proposed rule due to increased billing for fuel facilities. This results in lower FY 2009 annual fees for fuel facilities in this final fee rule.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the NRC publicly available work papers, licensees are grouped into categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified

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

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste related activities (see the work papers for the complete list). Effort factors are assigned as follows: one (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). Note that the effort factors for the HEU fee category have decreased from FY 2008. The safety and safeguards factors decreased in FY 2009 to reflect process changes such as HEU downblending and liquid UF₆ workload. Taking into account both of these changes, the total safety and safeguards effort factor change is relatively small.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	87 (33.3)	97 (51.1)
Uranium Enrichment (1.E)	2	70 (26.8)	40 (21.1)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	71 (27.2)	26 (13.7)
UF ₆ Conversion (2.A.(1))	1	12 (4.6)	7 (3.7)
Limited Operations (1.A.(2)(a))	1	12 (4.6)	3 (1.6)

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.1)	15 (7.9)
Hot Cell (1.A.(2)(c))	1	6 (2.3)	2 (1.1)

The budgeted resources, before the fee relief adjustment, for safety activities (\$13,206,181) are 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, before the fee relief adjustment, for safeguards activities (\$9,613,695) are 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 (\$176,668) 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 as summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2009 annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	\$4,691,000
Uranium Enrichment (1.E.)	2,804,000
Low Enriched Uranium (1.A.(1)(b))	1,649,000
UF ₆ Conversion (2.A.(1))	969,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	918,000
Limited Operations Facility (1.A.(2)(a))	765,000
Hot Cell (and others) (1.A.(2)(c))	408,000

The NRC does not expect to authorize operation of any new uranium enrichment facilities in FY 2009. The annual fee applicable to any type of new uranium enrichment facility is the annual fee in § 171.16, fee category 1.E., Uranium Enrichment, unless the NRC

establishes a new fee category for the facility in a subsequent rulemaking.

b. Uranium Recovery Facilities

The total FY 2009 budgeted cost to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories

2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately \$0.51 million. The derivation of this value is shown in Table IX, with FY 2008 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	\$2.56	\$7.21
Less estimated part 170 receipts	– 2.02	– 6.64
Net part 171 resources	\$0.54	\$0.57
Allocated generic transportation	+ N/A	+ N/A
Allocated fee relief	– 0.03	– 0.03
Billing adjustments	– 0.06	– 0.03
Total required annual fee recovery	0.46	0.51

The increase in the total required annual fee recovery is mainly due to an increase in uranium recovery licensing and inspection resources for the existing licensees. In FY 2009, NRC is excluding the generic budget resources supporting applications for new uranium recovery facilities from the annual fee charged to current uranium recovery licensees. Instead, the budget resources have been

allocated to operating reactors and fuel facility licensees because these fee classes would potentially benefit from increased production of the uranium milled by the new facilities. The generic resources supporting the new uranium recovery facilities do not benefit the existing uranium recovery licensees. The budgeted resources for the final rule increased by approximately \$0.2 million

compared with the proposed rule due to a correction in allocations to the uranium recovery fee class. These budget resources were incorrectly allocated to generic decommissioning activities related to uranium recovery sites. Therefore, resources from the fee-relief category, generic decommissioning/reclamation, were shifted to the uranium recovery fee class

for the final rule. This increase in the uranium recovery budget allocation was offset by the higher part 170 revenue estimate compared with the proposed rule. The annual fee in the final rule decreased compared with the proposed primarily due to the \$0.3 million increase in part 170 revenue estimate.

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 Department of Energy (DOE) and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the 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 2009, 35 percent of the total annual fee amount, less the amount specifically budgeted for Title I activities (\$246,563), is allocated to DOE's UMTRCA facilities. The remaining 65 percent of the total annual fee (less the amount specifically budgeted for Title I activities) is allocated to other licensees. The reduction in resources for licensing the DOE is based on the reduced effort expended for DOE UMTRCA. This is a change from FY 2008 when the distribution of the annual fee was 40 percent to DOE and 60 percent to non-DOE licensees. The change reflects

NRC's current level of effort. This change in the distribution of uranium recovery fee class resources between non-DOE uranium recovery facilities and DOE results in a decrease in the annual fee for the DOE compared to the increase in the annual fee for most of the non-DOE facilities. Of the required annual fee collections, \$339,000 (rounded) will be assessed to DOE for licensing its UMTRCA activities as fee category 18.B in § 170.16.

The remaining \$171,000 (rounded) will be recovered through annual fees assessed to the other licensees in this fee class (*i.e.*, conventional mills, ISR facilities, 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites), and a uranium water treatment facility.) Beginning in FY 2009, NRC is replacing the existing single fee category, 2.A.(2)(b), for uranium ISR facilities with four fee categories based on the type of ISR facilities. The addition of the new fee categories reflects the diverse types of uranium recovery facilities planned for construction and operation in the near future. Additionally, the new fee categories better reflect the NRC's regulatory benefit provided to the different types of facilities, both existing and planned.

The revised fee category, 2.A.(2)(b), is for an ISR yellowcake facility with zero to three satellites. These facilities include a central processing plant (CPP) that includes all the equipment necessary to collect uranium on resin, strip uranium from the resin, and process the uranium into a yellowcake slurry or dried yellowcake powder. These facilities may also receive resins from up to three satellite facilities operated by the same company for

further processing of the contained uranium into yellowcake.

The new 2.A.(2)(c) fee category is for an ISR yellowcake facility with more than three satellites. These facilities have a CPP with the same equipment as the fee category as stated previously, but have four or more satellite facilities, which necessitates a correspondingly greater allocation of the staff's generic resources.

The new 2.A.(2)(d) fee category is for a stand-alone ISR resin facility which performs ISR recovery operations and includes equipment for the collection of dissolved uranium from onsite underground ore bodies onto ion exchange resins. The resins are then transported to another company's facility for further processing of the collected uranium into yellowcake.

The new fee category, 2.A.(2)(e), is for a resin toll milling facility. These facilities do not conduct any onsite recovery of uranium but consist of a CPP for the purpose of processing resins from other ISR facilities into yellowcake. Allocation of generic resources for these facilities is less than that allocated for the other categories of ISR facilities.

The annual fee being assessed to DOE includes recovery of the costs specifically budgeted for NRC's Title I activities plus 35 percent of the remaining annual fee amount, including the fee-relief and generic/other costs, for the uranium recovery class. The remaining 65 percent of the fee-relief and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. Table X shows the costs to be recovered through annual fees assessed to the uranium recovery class.

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	\$246,563
35 percent of generic/other uranium recovery budgeted costs	101,425
35 percent of uranium recovery fee-relief	– 9,400
Total Annual Fee Amount for DOE (rounded)	339,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
65 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	188,361
65 percent of uranium recovery fee-relief	– 17,457
Total Annual Fee Amount for Other Uranium Recovery Licenses	170,904

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

\$171,000, annual fee amount to these licensees. This uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2009 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this

fee class (besides DOE). In FY 2009, these categories are conventional uranium mills and heap leach facilities, uranium solution mining 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. In FY 2009, the activities related to generic decommissioning/reclamation are not included in the matrix, because they are included in the fee-relief activities. Therefore they are not a factor in determining annual fees. The activities included in the FY 2009 matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity.

The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the FY 2009 matrix.

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

ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). Total benefit factors by fee category, and per licensee in each fee category, are then calculated. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

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

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills	1	200	200	18
Basic In Situ Recovery facilities	3	190	570	52
Expanded In Situ Recovery facilities	1	215	215	20
11e.(2) disposal incidental to existing tailings sites	1	65	65	6
Uranium water treatment	1	45	45	4

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. Applying these factors to the approximately \$171,000 in budgeted costs to be recovered from non-DOE

uranium recovery licensees results in the following annual fees for FY 2009:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES (OTHER THAN DOE)

Facility type (Fee category)	FY 2009 annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	\$31,200
Basic In Situ Recovery facilities (2.A.(2)(b))	29,700
Expanded In Situ Recovery facilities (2.A.(2)(c))	33,600
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	10,100
Uranium water treatment (2.A.(5))	7,000

c. Operating Power Reactors

The \$468.3 million in budgeted costs to be recovered through FY 2009 annual

fees assessed to the power reactor class was calculated as shown in Table XIII.

FY 2008 values are shown for comparison.

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	\$698.8	\$761.5
Less estimated part 170 receipts	– 258.1	– 288.8
Net part 171 resources	440.7	472.7
Allocated generic transportation	+ 1.0	+ 0.9
Allocated fee relief	– 5.9	– 1.6
Billing adjustments	– 16.5	– 3.6
Total required annual fee recovery	419.3	468.3

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in a FY 2009 annual fee of

\$4,503,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2009 spent fuel storage/reactor decommissioning annual fee of \$122,000. This results in a total

FY 2009 annual fee of \$4,625,000 for each power reactor licensed to operate. The part 170 revenue estimate for the final rule increased by approximately \$12.1 million compared with the

proposed rule primarily due to increased billings for work related to new applications and a correction to previous estimates. As a result, the annual fee for each power reactor decreased by approximately two percent in the final rule.

The annual fee for power reactors increases in FY 2009 compared to FY 2008 primarily due to an increase in budgeted resources for licensing renewal activities and other licensing tasks. This increase is partially offset by the higher estimated part 170

collections and fee-relief adjustment. In FY 2009, the NRC estimates an increase in part 170 collections of about 12 percent for this fee class. These collections offset the required annual fee recovery amount by a total of approximately \$288.8 million. The amended annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2009, budgeted costs of approximately \$15.1 million for spent

fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. FY 2008 values are shown for comparison.

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

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	\$22.4	\$21.1
Less estimated part 170 receipts	– 5.3	– 6.1
Net part 171 resources	\$17.1	\$15.0
Allocated generic transportation	+ 0.2	+ 0.2
Allocated fee relief	– 0.3	– 0.1
Billing adjustments	– 0.5	– 0.1
Total required annual fee recovery	16.6	15.1

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2009 annual fee of \$122,000 per licensee. The value of total budgeted resources for this fee class decreases in FY 2009 compared to FY 2008 due to a decrease in the budgeted resources for decommissioning and the fee-relief adjustment. The part 170 revenue

estimate for the final rule increased by approximately 11 percent due to increased billings for spent fuel storage and a correction to prior estimate, which resulted in a lower annual fee compared with the proposed rule.

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

Approximately \$350,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2009. Table XV summarizes the annual fee calculation for test and research reactors for FY 2009. FY 2008 values are shown for comparison.

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

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	\$0.99	\$1.22
Less estimated part 170 receipts	– 0.66	– 0.87
Net part 171 resources	0.33	0.35
Allocated generic transportation	+ 0.01	+ 0.01
Allocated fee relief	– 0.01	– 0.00
Billing adjustments	– 0.02	– 0.01
Total required annual fee recovery	0.31	0.35

This required annual fee recovery amount is divided equally among the four test and research reactors subject to annual fees, and results in a FY 2009 annual fee of \$87,600 for each licensee. The increase in annual fees from FY 2008 to FY 2009 is due to an increase in budget resources for license renewal activities partially offset by higher part

170 revenue estimate for test and research reactors class. The part 170 revenue estimate for the final rule increased by approximately 21 percent due to increased billings, which resulted in a lower annual fee compared to the proposed rule. The part 170 revenue estimates for FY 2009 increased by approximately 32 percent compared

with FY 2008 due to increased billing for test and research reactors, including Federal facilities. The Energy Policy Act of 2005 authorizes the NRC to bill Federal facilities for part 170 services.

f. Rare Earth Facilities

The one licensee who had an NRC specific license for receipt and

processing of source material under the Rare Earth fee class transferred to the Agreement State, Commonwealth of Pennsylvania, effective March 31, 2008.

Because the NRC does not anticipate receiving an application for a rare earth facility this fiscal year, no budget resources were allocated to this fee class

and no annual fee will be published in FY 2009. NRC has also revised the fee category for this fee class from 2.A.(2)(c) to 2.A.(2)(f) in FY 2009.

g. Materials Users

Table XVI shows the calculation of the FY 2009 annual fee amount for

materials users licensees. FY 2008 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.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 final
Total budgeted resources	22.8	28.7
Less estimated part 170 receipts	−2.0	−1.7
Net part 171 resources	20.8	27.0
Allocated generic transportation	+ 0.9	+ 0.8
Allocated surcharge	+ 0.3	+ 0.6
Billing adjustments	−0.5	−0.1
Total required annual fee recovery	21.4	28.4

The annual fee for most material users decreased in the final rule compared with the proposed rule due to an increase in the part 170 revenue estimate. However, the annual fee for fee category 17 increases in the final rule compared with the proposed rule due to the NRC's revision of the average professional staff hours for this fee category. The total required annual fees to be recovered from materials licensees increased in FY 2009 mainly because of increases in the budgeted resources allocated to this fee class for licensing activities, and a lower part 170 estimate. Annual fees for most fee categories within the materials users fee class increased. The number of licensees decreased because of the transfer of licensees to the Commonwealth of Virginia. Because the agreement with the Commonwealth of Virginia became effective March 31, 2009, the licensees that transferred to the Commonwealth of Virginia are subject to one-half of the annual fees in FY 2009.

To equitably and fairly allocate the \$28.4 million in FY 2009 budgeted costs to be recovered in annual fees assessed to the approximately 3,800 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach approximately allocates the generic and

other regulatory costs to the diverse categories of licenses based on 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 \$20.5 million in general costs (including allocated generic transportation costs) and is 1.3 for FY 2009. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of \$257. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately \$7.2 million in inspection costs, and is 1.71 for FY 2009. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. No unique costs were identified for FY 2009.

The annual fee to be assessed to each licensee also includes a fee relief adjustment of \$616,000 (see Section III.B.1., Application of Fee Relief/

Surcharge, of this document). This adjustment is the result of subtracting the \$96,000 in fee relief (reduction to annual fee) allocated to the materials users fee class from the approximately \$712,000 in LLW surcharge costs allocated to the fee class.

The annual fee for each fee category is shown in § 171.16(d). Annual fees for most fee categories within the materials users fee class increase, while some decrease. As indicated previously, changes in the FY 2009 annual fees for categories of licensees within the materials users fee class reflect not only change in the budgeted resources supporting this fee class, but also changes in the estimates of average professional staff time for materials users license applications and inspections. This is derived from the biennial review performed for the FY 2009 fee rule (see discussion of the biennial review under Section III.A.2., Flat Application Fee Changes, of this document). Accordingly, the relatively large percentage increase in the annual fee for many of the fee categories under § 171.16 is the result of a significant increase to the average professional staff time estimates.

h. Transportation

Table XVII shows the calculation of the FY 2009 generic transportation budgeted resources to be recovered through annual fees. FY 2008 values are shown for comparison.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION
[Dollars in millions]

Summary fee calculations	FY 2008 Final	FY 2009 Final
Total budgeted resources	\$5.7	\$6.1
Less estimated part 170 receipts	–2.3	–2.9
Net part 171 resources	3.4	3.1

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

The total FY 2009 budgeted resources for generic transportation activities, including those to support DOE CoCs, are \$3.1 million. The net part 171 resources for these activities in the FY 2009 final rule increased by \$0.1 million

compared with the proposed rule. This increase in the final rule is primarily due to approximately five percent decrease in the part 170 revenue estimate as a result of decreased billings for transportation-related reviews. 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 30734; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The number of CoCs for DOE decreased in FY 2009 resulting in a slightly lower

percent of the total CoCs compared with FY 2008.

The amount of the generic resources allocated is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered. In FY 2009, the generic transportation cost allocated to the most fee classes decreases compared to FY 2008 due to a higher part 170 estimate.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee exempt. For example, if 3 CoCs benefit the entire test and research reactor class, but only 4 of 30 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals $((4/30)*3)$, or 0.4 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2009
[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class (or DOE)	Percentage of total CoCs (percent)	Allocated generic transportation resources
Total	121.5	100.0	\$3.14
DOE	29.0	23.9	0.75
Operating Power Reactors	34.0	28.0	0.88
Spent Fuel Storage/Reactor Decommissioning	9.0	7.4	0.23
Test and Research Reactors	0.5	0.4	0.01
Fuel Facilities	17.0	14.0	0.44
Materials Users	32.0	26.3	0.83

The NRC will continue to charge DOE an annual fee based on the part 71 CoCs it holds, and will 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 (see Section III.B.1, Application of Fee Relief/ Surcharge, of this document), resulting in a total annual fee of \$719,000 for FY 2009. This fee is the same as last year primarily due to a decrease in the generic transportation resources offset by a lower reduction for fee-relief and billing adjustments. The annual fee for DOE in the final rule increased by

approximately six percent compared with the proposed rule due to a lower part 170 estimate.

4. Small Entity Fees

The small entity annual fee is charged to those licensees who qualify as small entities and who would otherwise be required to pay annual fees as stipulated under § 171.16(d). Based on an in-depth analysis conducted in FY 2009, the NRC is reducing the maximum small entity fee from \$2,300 to \$1,900 and the lower tier fee from \$500 to \$400. This reduction reflects the decrease in annual fees for the small materials licensees in the past two years.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951; August 10, 2007) to conform to the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to \$6.5 million from \$5 million. The NRC is revising the small entity lower tier receipts-based threshold to \$450,000 from \$350,000. This change is approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

5. Fee Category Changes

The NRC is revising the fee categories for uranium recovery facilities in

§ 171.16. The new fee categories better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion is in Section III.B.3.b., Uranium Recovery Facilities, of this document. The NRC is also modifying footnote 4 in § 171.16 to remove references to uranium milling. These references no longer apply because fee categories under 2.A.(2) related to uranium recovery facilities have been revised.

The NRC is also revising the description for fee category 7.A. in § 171.16. The NRC is amending fee category 7.A., related to medical licenses, to more precisely state which medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category in accordance with NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices.

The new fee category description does not represent any additions to the types of licenses regulated by NRC. The change clarifies the types of licenses covered under specific categories for NRC licensees.

6. Administrative Amendments

The NRC applies the 10 percent of its budget that it receives as fee relief under OBRA-90 to offset the budget resources supporting activities which do not directly benefit current NRC licensees (fee-relief activities). Any remaining amount is allocated to all licensees' annual fees (see Section III.B.1., Application of Fee Relief/Surcharge, of this document). The NRC is replacing the term for this allocated amount in § 171.15 and § 171.16 from 'surcharge' to 'fee-relief adjustment'. The new term better describes the allocated amount because the fee relief is a reduction in the annual fee for most fee classes in FY 2009. The allocation is an adjustment to the annual fee.

In summary, the NRC is—

1. Using the NRC's fee relief to reduce all licensees' annual fees, based on their percent of the NRC budget;
2. Revising the number of NRC licensees due to the Commonwealth of Virginia becoming an Agreement State effective March 31, 2009;
3. Establishing rebaselined annual fees for FY 2009;
4. Reducing the maximum small entity fee from \$2,300 to \$1,900, and the lower tier fee from \$500 to \$400;

5. Revising some fee categories to better reflect NRC's regulatory effort; and

6. Making certain administrative changes for purposes of clarification.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2009, as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

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

VI. Paperwork Reduction Act Statement

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

Public Protection Notification

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

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed under Title V of the IOAA (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc. v. United*

States, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (DC Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (DC Cir. 1976); *Electronic Industries Association v. Federal Communications Commission*, 554 F.2d 1109 (DC Cir. 1976); and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (DC Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

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

- (1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;
- (2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;
- (3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);
- (4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- (5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- (6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed OBRA-90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority, less appropriations from the NWF, be recovered through the assessment of fees. OBRA-90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water

Development Appropriation Act (EWDAA) amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007. As a result, the NRC is required to recover approximately 90 percent of its FY 2009 budget authority, less the amounts appropriated from the NWF, WIR, and generic homeland security activities through fees. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2009 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of CoCs, registrations of sealed source and devices, and Government agencies. OBRA-90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA-90, provides that—

(1) The annual fees will be based on approximately 90 percent of the Commission's FY 2009 budget of \$1,045.5 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program, and for WIR, generic homeland security activities, and less the amount of funds collected from part 170 fees;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Part 171, which established annual fees for operating power reactors, effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (DC Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the DC Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the OBRA-90, as amended, to recover approximately 90 percent of its FY 2009 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the

aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2009. This final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2009.

IX. Backfit Analysis

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

X. Congressional Review Act

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

List of Subjects

10 CFR Part 170

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

10 CFR Part 171

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

reactors, Source material, Special nuclear material.

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

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

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

Authority: Section 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); Sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 2. In § 170.11, the introduction text of paragraph (a)(1), paragraphs (a)(1)(ii), (a)(1)(iii) introductory text, (a)(1)(iii)(A), (B), and (C), and paragraph (b) are revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A request/report submitted to the NRC—

* * * * *

(ii) In response to an NRC request from the Associate Office Director level or above to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rulemaking, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC. To receive this fee exemption:

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

(B) The NRC must be the primary beneficiary of the NRC's review and approval of these documents. This exemption does not apply to a topical report submitted for the purpose of

obtaining NRC approval for future use of the report by the industry to address licensing or safety issues, even though the NRC may realize some benefits from its review and approval of the document.

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

* * * * *

(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such

exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

■ 3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects,

10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of \$257 per hour.

■ 4. In § 170.21, in the table, fee category K is revised to read as follows:

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

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees		Fees ^{1, 2}
* * * * *		
K. Import and export licenses:		
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.		
1. Application for import or export of production and utilization facilities ⁴ (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).		
Application—new license, or amendment; or license exemption request		\$16,700
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).		
Application—new license, or amendment; or license exemption request		9,800
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.		
Application—new license, or amendment; or license exemption request		4,100
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.		
Application—new license, or amendment; or license exemption request		2,600
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.		
Minor amendment to license		770

¹ Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless if the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

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

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

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

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

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

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].	
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]	\$1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. ⁴	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310].	\$2,400
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):]	Full Cost
(c) Expanded In Situ Recovery facilities [Program Code(s):]	Full Cost
(d) In Situ Recovery Resin facilities	Full Cost
(e) Resin Toll Milling facilities	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].	
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).	Full Cost
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water.	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	\$570
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	\$10,100
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]	\$12,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	\$4,500
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3.D.	
Application [Program Code(s): 02500, 02511, 02513]	\$6,500
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02512, 02514]	\$4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	\$3,000
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	\$6,000

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
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]	\$28,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. 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): 03255]	\$5,500
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. Application [Program Code(s): 03250, 03251, 03252, 03253, 03254, 03256]	\$10,000
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. Application [Program Code(s): 03240, 03241, 03243]	\$1,800
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. Application [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]	\$10,100
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. 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 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C. Application [Program Code(s): 03219, 03225, 03226]	\$6,100
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]	\$5,800
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].	\$1,400
Q. Registration of a device(s) generally licensed under part 31 of this chapter. Registration	\$310
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. ⁶ 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]	\$1,180
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or fee category (5).C. Application [Program Code(s): 02710]	\$1,400
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]	\$4,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. Application [Program Code(s): 03232]	\$4,600
5. Well logging:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
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]	\$3,400
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]	\$20,500
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]	\$11,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	\$8,000
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	\$2,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	\$1,180
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	\$8,300
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	\$8,300
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	\$5,800
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	\$980
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	\$3,100
Inspections	Full Cost
2. Users.	
Application	\$3,100
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.	
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed.	Full Cost
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	\$16,700

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc. Application—new license, or amendment; or license exemption request	\$9,800
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. Application—new license, or amendment; or license exemption request	\$4,100
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. Application—new license, or amendment; or license exemption request	\$2,600
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. Minor amendment	\$770
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.). ⁵	
<i>Category 1 Exports:</i>	
F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4). Application—new license, or amendment; or license exemption request	\$16,700
G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent. Application—new license, or amendment; or license exemption request	\$9,800
H. Application for export of Category 1 materials requiring Commission review and government-to-government consent. Application—new license, or amendment; or license exemption request	\$6,200
I. Application for export of Category 1 material requiring government-to-government consent. Application—new license, or amendment; or license exemption request	\$5,100
<i>Category 2 Exports:</i>	
J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4). Application—new license, or amendment; or license exemption request	\$16,700
K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review. Application—new license, or amendment; or license exemption request	\$9,800
L. Application for the export of Category 2 materials. Application—new license, or amendment; or license exemption request	\$4,600
<i>Category 1 Imports:</i>	
M. Application for the import of Category 1 material requiring Commission review. Application—new license, or amendment; or license exemption request	\$4,900
N. Application for the import of Category 1 material. Application—new license, or amendment; or license exemption request	\$4,100
<i>Category 2 Imports:</i>	
O. Application for the import of Category 2 material. Application—new license, or amendment; or license exemption request	\$3,600
<i>Category 1 Imports with Agent and Multiple Licensees:</i>	
P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review. Application—new license, or amendment; or license exemption request	\$5,700
Q. Application for the import of Category 1 material with agent and multiple licensees. Application B new license, or amendment; or license exemption request	\$4,600
<i>Minor Amendments (Category 1 and 2 Export and Imports):</i>	
R. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities. Minor amendment	\$770
16. Reciprocity. Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20. Application	\$1,800
17. Master materials licenses of broad scope issued to Government agencies: Application	\$73,100
18. Department of Energy. A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost

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

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

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

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

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, pre-application consultations and reviews of other documents submitted to NRC for review, and project manager time for fee categories subject to full cost fees, are due upon notification by the Commission in accordance with § 170.12(b).

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

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

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

² Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

³ Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect 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 whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

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

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

⁶ 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

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

Authority: Section 7601, Pub. L. 99-272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2132, as amended by Sec. 6101, Pub. L. 101-508, 104 Stat. 1388, as amended by Sec. 2903a, Pub. L. 102-486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109-103, 119 Stat. 2283 (42 U.S.C. 2214); Sec. 301, Pub. L. 92-314, 86 Stat. 227 (42 U.S.C. 2201w); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Sec. 651(e), Pub. L. 109-58, 119 Stat. 806-810 (42 U.S.C. 2014, 2021, 2021b, 2111).

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

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

* * * * *

(b)(1) The FY 2009 annual fee for each operating power reactor which must be collected by September 30, 2009, is \$4,503,000.

(2) The FY 2009 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 FY 2009 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2009 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession only status and has spent fuel onsite, and each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is \$122,000.

(2) The FY 2009 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 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 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 is reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, an annual fee reduction will be allocated to annual fees. The activities comprising the FY 2009 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2009 fee-relief adjustment allocated to the operating power reactor class of licenses is –\$1.6 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2009 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately –\$15,400. This amount is calculated by dividing the total operating power reactor fee-relief adjustment (–\$1.6 million) by the number of operating power reactors (104).

(3) The FY 2009 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is –\$79,500. The FY 2009 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is

approximately –\$646. 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 2009 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	\$87,600
Test reactor	\$87,600

■ 8. In § 171.16, the introductory text of paragraph (b), paragraphs (c) and (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.

* * * * *

(b) The annual fee is comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the fee-relief adjustment are shown in paragraph (e) of this section. The base annual fee is the sum of budgeted costs for the following activities:

* * * * *

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

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$450,000 to \$6.5 million	\$1,900
Less than \$450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$450,000 to \$6.5 million	1,900
Less than \$450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

(d) The FY 2009 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2009 fee-

relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2009 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]	\$4,691,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	1,649,000
(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]	765,000
(b) Gas centrifuge enrichment demonstration facilities	918,000
(c) Others, including hot cell facilities	408,000

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

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1,2,3}
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]	2,700
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]	7,600
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	2,804,000
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]	969,000
(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]	31,200
(b) Basic In Situ Recovery facilities [Program Code(s):]	29,700
(c) Expanded In Situ Recovery facilities [Program Code(s):]	33,600
(d) In Situ Recovery Resin facilities	⁵ N/A
(e) Resin Toll Milling facilities	⁵ N/A
(f) Other facilities ⁴ [Program Code(s): 11700]	⁵ N/A
(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]	⁵ N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	10,100
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water	7,000
B. Licenses that authorize only the possession, use and/or installation of source material for shielding [Program Code(s): 11210]	1,310
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	17,400
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]	40,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	10,300
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3.D. [Program Code(s): 02500, 02511, 02513]	13,500
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license [Program Code(s): 02512, 02514]	8,700
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]	6,600
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]	12,700
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]	62,800
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03255]	8,300

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}
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, 03254, 03256]	14,900
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]	3,300
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]	2,500
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]	19,800
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	7,500
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. [Program Code(s): 03219, 03225, 03226]	11,400
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]	22,700
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	3,700
Q. Registration of devices generally licensed under part 31 of this chapter	¹³ N/A
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]	3,300
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]	3,700
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	12,200
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	⁵ N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	18,700
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	11,800
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]	9,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	⁵ N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	35,400
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	17,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ [Program Code(s): 02110]	36,300

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}
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	6,200
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]	3,300
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	10,400
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	10,400
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	7,300
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	1,200
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
2. Other Casks	⁶ N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	⁶ N/A
2. Users	⁶ N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	⁶ N/A
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	⁶ N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	¹² N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	⁷ N/A
B. Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies	187,000
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 719,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	339,000

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, 2007, 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 irradiation activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

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

³ Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

⁴ Another license includes licenses for extraction of metals, heavy metals, and rare earths.

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

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

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

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

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

¹⁰ This includes Certificates of Compliance issued to DOE 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 2009 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 26th day of May 2009.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

Note: This Appendix Will Not Appear in the Code of Federal Regulations.

APPENDIX A TO THIS FINAL RULE— REGULATORY FLEXIBILITY ANALYSIS FOR THE FINAL AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND 10 CFR PART 171 (ANNUAL FEES)

I. Background

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

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

The NRC is required each year, under OBRA-90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. In total, the NRC is required to bill approximately \$866.5 million in fees for FY 2009.

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

The Commission is rebaselining its part 171 annual fees in FY 2009. Rebaselining fees results in increased annual fees for three classes of licensees (power reactors, non-power reactors, and fuel facilities), and decreased annual fees for two classes of licensees (spent fuel storage/reactor decommissioning and transportation). Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The Small Business Regulatory Enforcement Act (SBREFA) provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective.

The Small Business Regulatory Enforcement Act also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. As required by law, this analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2009 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees charged to those individuals, organizations, and companies licensed by the NRC, including those licensed under the NRC materials program. Comments received on previous proposed fee rules and the small entity certifications in response to previous final fee rules indicate that licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of fees on materials licensees. In FY 2008, about 26 percent of these licensees (approximately 1,100 licensees) qualified as small entities.

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

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

larger competitors because the proposed fees would be identical for both small and large firms.

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

3. Some companies would go out of business.

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

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

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

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

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

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

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that a maximum fee for small entities is the most appropriate and effective option for reducing the impact of fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined 10 CFR part 170 licensing and inspection fees and Agreement State fees for fee categories which were expected to have a substantial number

of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991.

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

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

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

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000 and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of fees NRC charged its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. Because of the 25 percent increase, in FY 2000 the maximum small entity annual fee increased from \$1,800 to \$2,300. However, despite the increase, total fees for many small entities were reduced because they no longer paid part 170 fees. Costs not recovered from small entities were allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities could continue to have a significant impact on materials licensees with relatively low annual gross receipts. Therefore, the NRC continued to provide the lower-tier small entity annual fee for small entities with relatively low gross annual receipts, manufacturing concerns and for educational institutions not State or publicly supported with fewer than 35 employees. The NRC also increased the lower tier small entity fee by

25 percent, the same percentage increase to the maximum small entity annual fee, resulting in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

The NRC stated in the RFA for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officers Act. Accordingly, the NRC examined the small entity fees again in FY 2003 and FY 2005, determining that a change was not warranted to those fees established in FY 2001.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC received one comment requesting that small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (*i.e.*, they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities, in addition to the part 171 small entity fee reduction. Regarding export licenses, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC charges fees per application, this process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities. Therefore, the NRC retained the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2007, and FY 2008.

The NRC conducted an in-depth biennial review of the FY 2009 small entity fees. The review noted significant changes between FY 2000 and FY 2008 in both the external and internal environment which impacted fees for NRC's small materials users licensees. Since FY 2000 small entity licensees in the upper tier have increased approximately 53 percent. In addition, due to changes in the law, NRC is now only required to recover 90 percent of its budget authority compared to 100 percent recovery required in FY 2000. This ten percent fee relief has influenced the small materials users' annual fees. A decrease in the NRC's budget allocation to the small materials users has also influenced annual fees in the last two years. Based on the review, the NRC will change the small entity fee for FY 2009 and establish a new methodology for reviewing small entity fees. The NRC will now determine the maximum small entity fee each biennial year using a fixed percentage of 39 percent applied to the prior two-year weighted average of small materials users fees for all fee categories which have small entity licensees.

For FY 2009, these changes result in a maximum small entity fee of \$1,900 and a lower tier annual fee of \$400. This new methodology allows small entity licensees to

be able to predict changes in their fee in the biennial year based on the small materials fees for the previous two years. Using a two-year weighted average will smooth the fluctuations caused by programmatic and budget variables and will reflect the importance of the fee categories with the majority of small entities. Since the current small entity annual fee of \$2,300 is 39 percent of the two-year weighted average for all fee categories in FY 2005 and FY 2006 that have an upper tier small entity licensee, the agency will retain the 39 percent as the percentage applied to the prior two-year weighted average of small materials users fees. The lower tier annual fee remains at 22 percent of the maximum small entity annual fee.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$1,900 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$450,000, small governmental jurisdictions with a population of fewer than 20,000, small manufacturing entities that have fewer than 35 employees, and educational institutions that are not State or publicly supported and have fewer than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951; August 10, 2007) to conform with the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to \$6.5 million from \$5 million. The NRC is now proposing to revise the small entity lower tier receipts-based threshold to \$450,000 from \$350,000 approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

ATTACHMENT 1 TO APPENDIX A— U.S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2009

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Congressional Review Act requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under

the Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2009 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2009 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity (listed in 10 CFR 2.810) must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at <http://www.nrc.gov>. The form can then be accessed by selecting "Business with NRC," then "NRC Forms," selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees.resource@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the

address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of \$6.5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

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

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of fewer than 50,000;

(5) *Small education institution*—an education institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.¹

To further assist licensees in determining if they qualify as a small entity, the following

guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity, including a foreign entity, does not qualify as a small entity.

NRC Small Entity Fees

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

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
\$450,000 to \$6.5 million	\$1,900
Less than \$450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$450,000 to \$6.5 million	1,900
Less than \$450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

Instructions for Completing NRC Small Entity Form 526

1. Complete all items on NRC Form 526 as follows: (**Note:** Incomplete or improperly completed forms will be returned as unacceptable.)

(a) Enter the license number and invoice number exactly as they appear on the annual fee invoice.

(b) Enter the North American Industry Classification System (NAICS).

(c) Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for

billing purposes on the payment copy of the invoice—include contact's name, telephone number, e-mail address, and company Web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.

(d) Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(i) A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of

a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business.

(ii) Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources,

¹ An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a

nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who

provides an educational program for which it awards academic degrees, and whose education programs are available to the public.

regardless of the form of the revenue and not solely receipts from licensed activities.

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

(iv) The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

2. If the invoice states the "Amount Billed Represents 50% Proration," the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either \$950 or \$200) for each category billed.

3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee

payment and the "Payment Copy" of the invoice to the address shown on the invoice.

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

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either \$1,900 or \$400 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a "possession only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration."

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year.

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

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

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

[FR Doc. E9-13425 Filed 6-9-09; 8:45 am]

BILLING CODE 7590-01-P