

G. Jackson
5/12/06

FY 2000 FEE RULE COMMENT RESPONSES
(Uranium Recovery Commentors/NEI UR Comment)

A. PART 170 COMMENTS AND RESPONSES

1. Comment - All parties commenting from the uranium recovery industry were strongly opposed to the NRC's current billing method for Project Managers (PMs). There was concern expressed by one commentor that the present billing structure for PMs could adversely affect the viability of that company, especially in light of the depressed uranium market and the industry's inability to pass these increased costs on to the consumer. Several commentors stated the hourly rate of \$143 for PMs/professional staff was excessive considering that senior-level private consultants in the industry charge far less for comparable services. Another concern voiced was the unequal distribution of licensee sites among PMs, thereby subjecting certain licensee's to a disproportionate share of PM non-direct (e.g., administrative/overhead) costs. Many comments were directed towards the unfairness of the types of PM activities being charged to licensees that had little or no apparent connection to the sites the PMs were managing. Finally, one commentor stated that non-direct PM charges should be captured under Part 171 annual fees vs Part 170 direct charge fees due to the inequities of the NRC's current billing system, thereby allowing non-direct PM charges to be evenly distributed to all uranium recovery licensees paying annual fees.

Response - During the FY 1999 Fee Rulemaking period, the NRC made a conscientious decision to recover the full costs for PMs assigned to licensees, with the exception of PM activities that were generic in nature (e.g., rulemaking and preparation of generic guidance documents, leave time, etc.). This decision was predicated on the Commission's intent to expand the scope of Part 170 collections which included, in part, PM costs. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and previous Commission guidance. In summary, these guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations. In most instances, PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service than through annual fees assessed to all of the licensees in a particular class. However, the NRC will revisit this issue in the FY 2001 Fee Rule to ensure PM costs are being assessed in the fairest manner.

PM

*add
licensee
also pay
for PM
costs*

The NRC revised its professional hourly rate for the nuclear materials and nuclear waste program to \$143 per hour (\$253,450 per direct FTE). This total encompasses salaries and benefits plus contracts for non-program direct management and support activities (i.e., overhead costs), which are all factored into the professional hourly rate. A more

*Separate this
Hourly Rate*

detailed description of the hourly rates and how they were derived is found in Section II(1) of this rulemaking. As previously noted, the NRC is a full cost recovery agency and must recover approximately 100 percent of its budget authority through either fees for direct services (Part 170) or annual fees (Part 171). The professional hourly rate of \$143 marks a \$3 per hour increase over similar FY 1999 figures, and is primarily attributable to the Government-wide pay increase for FY 2000. ~~This equates to approximately a 2.1 percent increase over the previous year for professional hourly rates. In comparison, inflation for FY 1999, as measured by the Consumer Price Index (CPI), was approximately 2.4 percent.~~ Therefore, the nominal increase in the professional hourly rate for FY 2000 is below the CPI's inflationary rate, and consistent with the Commission's overall policy of cost management.

*the materials
for the
program
and
#143
for the
hourly
program
are
necessary
to meet
the
100%
for
recovery
requirements.*

*although
the Govt - wide
FY 2000
more than 4% increase
in the hourly
rates*

The NRC acknowledges some commentors' concerns about the ~~unequal~~ distribution of licensee sites among PMs in the NRC's Uranium Recovery Program. In general, PMs assigned to more than one licensee or site have their non-direct costs prorated to each of the licensees or sites for which they are assigned. The distribution of PM vs technical review assignments within the program ranges from a small number of individuals who perform only technical reviews to a small number of individuals who are purely PMs with essentially no technical assignments -- with the remainder of the professional staff performing both types of work. The mix of PM vs technical assignments varies by the technical capabilities of the staff and the number and nature of licensee submittals over time. Thus, it is most practical and efficient for the staff to be organized in such fashion to provide maximum flexibility when responding to various types of submittals that are received. The NRC is currently reviewing the allocation of PM costs to specific licensees, and will address this issue further in the FY 2001 Fee Rule.

Similarly, the NRC recognizes many commentors' concerns with respect to the types of PM activities being charged to licensees. The FY 1999 Fee Rule outlines the types of PM activities that are recovered through Part 170 and Part 171 fees, and provides several examples of each type of activity. The commentors' specific issue appears to focus on certain types of non-direct PM activities that are being assessed under Part 170 fees, and that these activities do not provide a direct or indirect benefit to the assigned licensee or site. In general, the NRC has categorized the non-direct PM activities in such a manner as to create the most equitable allocation of costs among the licensees or sites most likely to benefit from a PM's activities. Because the allocation of certain non-direct PM costs is somewhat subjective in nature, there may not be a clear nexus between the PM's activity and the benefit derived by the licensee. Regardless of this issue, all PM time must be billed under either Part 170 or Part 171 fees. However, the NRC is currently reviewing the types of non-direct PM activities that are being charged to licensees, and will address this issue further in the FY 2001 Fee Rule.

2. Comment - Several commentors expressed concern over the lack of appropriate invoice detail regarding quarterly billings for NRC staff services provided to licensees.

Response - With respect to providing sufficient billing detail for discrete services, the NRC believes that sufficient information is currently provided to licensees or applicants

on which to base payment of invoices. The NRC has addressed this issue previously in a similar response to the American Mining Congress (60 FR 20918, April 28, 1995). The NRC's invoices for full-cost licensing actions and inspections currently contain information detailing the type of service for which the costs are being billed, the date or date range the service was performed, the number of professional staff-hours expended in providing the service, the hourly rate, and the contractual costs incurred. A licensee or applicant who does not understand the charges, or who feels they need more information to understand a bill may request additional information from the NRC regarding the specific bill in question. The NRC will provide all available data used to support the bill upon a request of the licensee or applicant. Additionally, if requested, the NRC program staff will provide a best estimate of the hours required to complete a specific licensing action, with the caveat that the actual hours expended may differ from that estimate based on certain circumstances (e.g., timeliness of submittals, quality of products being submitted for review, etc.). However, OMB Circular A-25, which establishes guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems need not be created solely for the purpose of determining or estimating full cost. Therefore, the NRC does not currently plan to develop additional systems beyond those already described solely to provide additional cost information.

particular points

B. PART 171 COMMENTS AND RESPONSES

1. Comment - Some commentors indicated that the NRC's attempt to shift fees from Part 171 category to Part 170 category is illusionary at best, and represents no real savings to the licensee. They further expounded that shifting these costs to Part 170 fees has not resulted in an offsetting decrease in Part 171 fees, thereby exacerbating an already unfair and inequitable situation.

Response - The NRC believes it provides sufficient information concerning its proposed fee schedules each year to allow effective evaluation and constructive comment by the public. For example, each proposed fee rule provides detailed explanations of the budgeted costs for the various classes of licensees being assessed fees, as well as a detailed accounting of its Part 170 and 171 fee structure. In addition, the NRC work papers pertinent to the development of the fees to be assessed are placed in the NRC's Public Document Room on the first day of the public comment period. These work papers provide additional information concerning the development and calculation of fees, including NRC's FY budgeted resources at the activity and subactivity level for the agency's major programs. The NRC staff is also available to meet with interested parties in person, respond to written inquires, or respond to telephonic inquires to explain its fee schedules.

The NRC takes issue with the commentors' specific concern about increasing 170 fees with no corresponding drop in Part 171 fees. Overall, the \$447 million to be recovered through Part 170 and 171 fees for FY 2000 is \$2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule. Additionally, the NRC estimates that approximately \$106 million will be recovered in FY 2000 from Part 170 fees and

(As the NRC explained in the proposed rule, the slight increase in Part 171 fees is due to several factors. To reiterate, while there is a decrease in submittals to 171 collection, there is a decrease in other receipt activities and the 170 million recovery amount is 2.6 million less than the 1999 amount.)

other offsetting receipts, compared to \$107.7 million in FY 1999, which marks a \$1.7 million decrease. As the NRC explained in the FY 1999 proposed and final fee rules (64 FR 15876, dated April 1, 1999; and 64 FR 31458, dated June 10, 1999), the amount for FY 1999 included a \$4.1 million carryover from additional FY 1998 collections, which in turn was applied to FY 1999 collections, thereby reducing the total fee recovery amount for FY 1999. However, this carryover does not exist for FY 2000. The \$1.7 million decrease for FY 2000 is the difference between the \$4.1 million carryover from additional 1998 collections and an estimated \$2.4 million increase in Part 170 collections for FY 2000 as compared to FY 1999. This increase in estimated Part 170 collections, from \$103.5 million in FY 1999 to \$105.9 million for FY 2000, is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for PMs, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval. The remaining \$341 million (\$447 million total FY 2000 fee recovery amount less \$106 million for estimated Part 170 collections and other receipts) will be recovered through Part 171 annual fees. This \$341 million annual fee recovery amount for FY 2000 is approximately \$1 million less than in FY 1999. However, the NRC estimates a net annual fee billing adjustment of approximately \$5.7 million for FY 2000 resulting from bills that will not be paid in FY 2000, the small entity subsidy, and payments received in FY 2000 for FY 1999 invoices. In addition to these fee adjustments, there are approximately 530 fewer licenses subject to NRC annual fees in FY 2000 than in FY 1999 due primarily to Ohio becoming an Agreement State in August 1999. As a result of these adjustments, the ~~proposed~~ ^{final} FY 2000 annual fees ~~would increase~~ ^{have} slightly by approximately 1.4 percent over FY 1999 despite the annual fee recovery amount for FY 2000 actually decreasing by approximately \$1 million from the previous year.

2. Comment - Several commentors mentioned the NRC's FY 1999 rebaselining placed a significant financial burden on them and the uranium recovery industry in general due to increased fees, and that uranium recovery licensees ~~bore~~ ^{bear} a disproportionate share of the cost burden from this process.

Response - The Commission established its policy regarding rebaselining frequency in the FY 1999 final fee rule (64 FR 31448; dated June 10, 1999). Therein the Commission determined that future annual fees should be rebaselined every three years, or earlier if warranted. This decision was based on the experience gained as a result of applying the criteria from rebaselining over the previous four years. The Commission's decision on the appropriate method for establishing annual fees (e.g., rebaselining vs percentage change) is made each year after considering all relevant factors. Rebaselining years, as opposed to percentage change years, can result in wide fluctuations of costs for certain classes of licensees due to substantial changes in the NRC's total budget or the magnitude of the budget allocated to a specific class of licensee, decreasing numbers of licensees in a particular class, etc. However, rebaselining on a systematic basis ensures that costs are allocated equitably among the various classes of licensees based on the fee assessment methodology set forth in the NRC's annual fee rule.

3. Comment - Many commentors communicated their apprehension about the decreasing number of licensees in the uranium recovery industry to pay the NRC's annual fees, resulting in continually increasing Part 171 fees for fewer and fewer

Decreasing
Licensees
Contribute
to Glenda

licensees. This creates the untenable effect of the last licensee subsidizing the NRC's entire Uranium Recovery Branch.

the fees to be paid to the remaining licensees
Response - The NRC acknowledges the commentors' concern regarding the effects a declining licensee base has on its Part 171 costs. As previously noted, the NRC is mandated by OBRA-90 to collect 100 percent of its adjusted budget authority in the form of Part 170 and 171 fees. Notwithstanding, the NRC continues to seek legislative relief with respect to the Part 171 fees that have no connection to licensing activities but are still assessed to licensees as part of their annual fee (e.g., Agreement State program oversight, international programs, etc.). Additionally, the NRC is seeking an amendment to the Atomic Energy Act to provide it the authority to impose fees on all other Federal agencies. Passage of these bills should result in a reduced budget authority for fee collection purposes. Additionally, the NRC is evaluating options to reduce NRC staff efforts and costs in areas where the licensee base is diminishing without sacrificing its health and safety mission.

the number of licensees
4. Comment - Several commentors expressed their concern over the instability of fees from year to year. As a result, it becomes increasingly difficult for licensees to accurately budget for NRC's annual costs.

Response - The Commission believes its annual charges meet the statutory criteria that they be fairly and equitably allocated among licensees and, to the maximum extent practicable, have a reasonable relationship to the cost of providing regulatory services. To address licensee concerns about fee stability and predictability, the Commission adopted the policy of adjusting the annual fees by the percentage change in the total NRC budget, with adjustments for numbers of licensees in particular fee classes and other necessary adjustments to meet the requirement of recovering approximately 100 percent of the budget through fees. This percent change method is used only if there has not been a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fees will be rebaselined. As of FY 1999, the maximum interval for rebaselining is three years; however, the Commission has stated that it will rebaseline earlier if warranted. Although the Uranium Recovery Industry has been generally supportive of the percentage change methodology for fee assessment purposes, there are other classes of licensees who prefer rebaselining on an annual basis. Based on the mixed support for both fee assessment methodologies, the NRC supports its current practice of rebaselining every three years while using percentage change during the between years.

standby
5. Comment - One commentor indicated it was inappropriate for the NRC to charge licensees in 'standby' mode the same annual fees as licensees who are actively operating a facility, especially in light of the fact that regulatory review and inspection efforts by the NRC are minimal for these dormant sites. Similarly, another commentor remarked that the NRC should lessen or discontinue its assessment of annual licensing fees on decommissioned facilities that are simply awaiting NRC approval of reclamation plans.

Response - In the FY 1991 fee rule the Commission made a determination to recover NRC costs attributable to uranium recovery licensees either in operation or standby.

Ref: 100

Therein the Commission stated that this method was practical, equitable, and a fair way to recover NRC costs given the limited number of operating mills, and is consistent with the approach taken for other classes of licensees. The Commission further elaborated on this issue in response to a similar comment from the American Mining Congress in 1995 (60 FR 20918, dated April 28, 1995). Here the Commission asserted it will continue to assess annual fees based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material, regardless of whether the facility is actively operating or in a standby status. The basic premise for this policy is that the benefit the NRC provides a licensee is the authority to use licensed material. The choice of whether or not to exercise that authority is a business decision of the licensee. Because of the mandate that the NRC recover approximately 100 percent of its budget through fees, to refrain from charging annual fees to mills in a standby mode would increase the annual fees for other licensees in the class because the number of licensees assessed annual fees would decrease. Such an approach would raise fairness and equity concerns. However, licensees who voluntarily relinquish the authority to operate and have ceased operations will have their annual fee waived by the NRC, to include sites with reclamation or decommissioning plans pending NRC review. Thus, the commentor's remark about the NRC assessing annual fees to sites in decommissioning is incorrect, and therefore moot.

It should be noted that licensees in standby status receive benefit from NRC's generic guidance and rules applicable to the uranium recovery industry. Additionally, licensees in standby mode typically receive less Part 170 fees due to the NRC's reduced oversight activities at those sites.

The Part 170 fees assessed to licensees

reflected any decrease in licensing and inspection activities for these facilities.

C. OTHER COMMENTS AND RESPONSES

1. Comment - Many commentors asserted the uranium market is depressed and at a historical low, and that the NRC's current fee structure was excessive and unfair to the uranium recovery industry class of licensee. Furthermore, they indicated that licensees do not have the capability of passing through these additional costs to its consumer, thereby adversely affecting the viability of some companies.

Response - The NRC acknowledges the commentors' concern about the depressed state of the uranium industry, and that any increase in fees to uranium recovery licensees poses a significant financial hardship. However, without legislative relief, the NRC is mandated by OBRA-90 to collect approximately 100 percent of its budget authority. As stated in response to similar comments on this issue in the FY 1993 fee rule (58 FR 38667; dated July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency, and does not have the resources necessary to evaluate continuously purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA-90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status or

Address Small entity regulatory fees.

market conditions, and has only considered the fee impacts obligated by law.

2. Comment - ~~All~~ commentors urged the NRC to relinquish its jurisdiction of in-situ leach (ISL) uranium mining wellfield regulation as outlined in the National Mining Association's (NMA's) 1998 White Paper to the Commission.

attached
discussing the scope of rulemaking
 Response - The NRC recognizes the commentors' concern regarding NRC's role in ISL wellfield regulation as discussed in the FY 1999 fee rule. In summary, the NRC began examining its role in the regulation of ISL wellfields and the associated groundwater in 1997. The NMA provided its White Paper outlining four major concerns, including one related to in-situ facility regulation. Based on the NRC staff's and NMA's concerns, the NRC staff prepared a paper which is now before the Commission that outlines various options for NRC regulation of groundwater and wastes at ISL facilities. ~~The Commission has not made a decision with respect to the NRC staff's recommendations.~~ Based on the Commission's decision, the NRC staff will shape its future ISL regulatory program accordingly.

3. Comment - Several commentors espoused a lack of relationship between NRC's regulatory program and the benefits derived by industry, such as a disparity in Part 171 fees vs Part 170 fees and excessive levels of oversight/inspections for operating licensees for what amounts to a relatively benign industry from a health and safety standpoint.

Response - The NRC continues to look at ways to recover more of its fees through Part 170 related activities as discussed in detail in the FY 1999 rulemaking. Therein the Commission decided to expand the scope of Part 170 fees to include incident investigations, certain performance assessments and evaluations, reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for time expended by PMs (except time spent on generic activities such as rulemaking, leave, etc.). Each rebaselining year the NRC will continue to relook at the types of staff activities it assesses fees for under Part 171 to determine if they can be more appropriately charged under Part 170, and to ensure the most equitable approach is taken to distributing NRC's costs to those licensees most likely to benefit from the services provided.

The NRC takes issue with the commentors' remark about the uranium recovery industry being subjected to excessive regulatory oversight by the NRC for a relatively low risk operation. The NRC is charged with the responsibility of regulating the nation's civilian radioactive source material supply in a manner that is safe to public health and the environment. As such, uranium mining is one of the activities that the NRC regulates under its mandate. The commentors' suggestion that uranium mining presents a relatively low health and safety risk does not obviate the NRC's responsibility to regulate the industry, nor does it address the potential health and environmental issues associated with groundwater clean-up, tailings impoundments, facility decommissioning, yellowcake processing and handling, etc. When developing its annual budget, the NRC's Uranium Recovery Branch looks at the level of regulatory effort needed to fulfill its

mission and bases its inspections and review efforts accordingly. This budget is closely scrutinized by the NRC's Office for Nuclear Material Safety and Safeguards, the Commission, and the U.S. Senate before it's approved to ensure proper resources are allocated to sufficiently protect public health and safety, and the environment at the most efficient staffing level.

Additionally, the NRC has examined ways to reduce or eliminate inspections associated with uranium recovery facilities. In establishing inspection frequencies, the NRC considers the risk to public health and safety, and the environment. Sites under reclamation are to be inspected once every three years unless a specific request is received from a licensee for the NRC staff to review elements of construction on an earlier basis. Generally, sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year made by the NRC based on the site's previous inspection record. Thus, if an operating uranium recovery licensee has a good inspection record and the NRC determines that a reduced number of inspections is warranted, it will eliminate one biannual inspection. Furthermore, the NRC has instituted performance-based licensing for uranium recovery licensees to help streamline licensing and oversight activities, and when implemented properly by the licensee, should result in reduced review efforts by the staff.

Can we add anything about increased costs for general activities?

4. Comment - Many commentors voiced their displeasure with the inequities of OBRA-90, and encouraged the NRC to continue its efforts in pursuing legislative action to obtain fee relief for the uranium recovery industry.

Response - The NRC plans to continue its pursuit of legislative action to gain fee relief regarding those costs that are currently being assessed to licensees under Part 171 whereby the licensee receives no direct or indirect benefit from the NRC's activity. ~~The FY 1999 fee rule outlines the previous and current actions the NRC is taking in this regard, to include fairness and equity concerns, reimbursement of services provided to other Federal agencies, and removal of certain costs from the fee base.~~

See Slides

From: Steven Crockett
To: Diane Dandois, Glenda Jackson
Date: Mon, May 8, 2000 3:47 PM
Subject: OGC Responses to fee comments

Glenda and Diane,

Attached are responses to Shaw/Pittman's comments, and to NMA's comment on the handling of PM costs. Some notes are in order on our handling of the comments we said we'd focus on. Also, there's some work to be done in connection with the 2d response, I hope not too much, and I'm volunteering to take the first step.

Response to Lewis' statutory and constitutional arguments — It turns out he made the very same comments last year, and we took pains to respond to them last year. In fact, the first 2 or 3 pages of the statement of considerations for the fy99 rule were devoted his comments and our response. We here think there's no need to redo all that. What we said then still stands. So we've made quite short work of it for 2000.

Response to NMA's comments on PM costs — Trip has talked to Jesse about this matter. After much going back and forth here, and study of the fy99 proposed and final rule statements of considerations on this point, we think NMA is essentially right. Our statements last year are pretty clear that the PM costs we charge to a licensee under 170 are pretty directly related to that licensee, and generic matters get charged elsewhere. Thus staff meetings get charged to the licensee if they're about that licensee, or to other licensees also if they're impacted also, but a staff meeting about application of risk-informed regulation to every licensee, or a major class, should not be charged under 170. Nor CFC, retirement training, etc.

Now, how wide of the mark have we been thus far? Is that one PM we heard about only the tip of the iceberg, or is she an outlier? We suspect the latter, but can we find out in some relatively simple way? We'd like to be able to say that there haven't been errors other than the ones you'd expect in the first months of a new policy, and that probably the errors balance each other. Our proposed response has us moving forward from this point, not backing up to make sure every bill for the first two quarters is just right. For the long term we may need to get the message out about what to charge and what not. I don't know what that may involve eventually, but if you could get me copies of the various directives (NMA claims to have seen a directive on fees) that have been put out on the matter, I could see how close they are to the mark. That will give us some sense of how wide-spread errors might be.

Response to Lewis on the 1.4% increase — This part of Lewis' comments is new for 2000. I've taken the opportunity to push an old line of mine, namely that nominal increases are often real decreases. If we don't keep pressing this Econ 101 distinction, we're going to tell the wrong story about our budget, that it's going up or staying even when in fact it's going down and has been really ever since 1976, except for bumps around TMI and design certifications. Here the fee goes up by 1.4%, but inflation as measured by the CPI-All Urban, went up 2.4%, and so in real terms fees in fact went down, along with the NRC budget as a whole, the latter to a new historic low. We should say so.

CC: Catherine Holzle, Joseph Gray, Norman St. Amour,...