existing fee policy, but continue to seek cost efficiencies through its annual reviews conducted as part of the budget process.

The issue of charging licensees in standby status has been discussed in many previous fee rules. In summary, the Commission has stated that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license authorizing possession and use of nuclear material, irrespective of the licensee's intent to operate its facility or remain in standby, represents the fairest option available under current legislation. This policy is based on the premise that the benefit the NRC provides a licensee is the authority to use licensed material. Whether or not a licensee decides to exercise this authority is a business decision outside the realm of NRC jurisdiction. Additionally, licensees in a standby status continue to benefit from NRC's generic guidance and rules applicable to the uranium recovery class of licensees, and therefore should continue to pay annual fees. Furthermore, based on fee recovery requirements of OBRA-90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would ultimately increase the annual fees assessed to the remaining licensees. In effect, providing such fee relief would exacerbate the existing condition of decreasing numbers of licensees, which is an ongoing concern of the commenters. Nonetheless, the Commission will reexamine this issue prior to publishing the FY 2003 fee rule.

In this rulemaking, the Commission has adopted the proposed revised methodology for allocating uranium recovery budgeted costs. Moreover, the FY 2002 annual fees reflect the Office of Nuclear Material Safety and Safeguard's revised policy for assigning PMs. As explained previously, part 171 annual fees for the uranium recovery class includes a prorated share of the FY 2002 budgeted costs for the MOX contested hearing.

Jesse's Comment on final fee rule LA/13/02