

G. Jackson



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POLICY ISSUE (Notation Vote)

February 27, 1998

SECY-98-034

FOR: The Commissioners

FROM: Jesse L. Funches
Chief Financial Officer

Document # 12

SUBJECT: FY 1998 PROPOSED FEE RULE

PURPOSE:

This paper requests Commission decision on the methodology for determining the FY 1998 annual fees. The Commission decision will be reflected in the FY 1998 proposed fee rule. This paper also informs the Commission of staff's plans for addressing concerns related to annual fees for spent fuel storage.

SUMMARY:

For the past two years, the NRC's annual fees have been determined by the "percent change" method announced in the statement of considerations supporting the FY 1995 final fee rule as part of the agency's efforts to stabilize fees. Under the percent change method, annual fees have been annually adjusted upward or downward based on NRC's budget authority, changes in the number of licensees paying fees, and the amounts of licensing and inspection fees to be collected. The FY 1995 statement of considerations indicated that this method would be used in FY 1996 through FY 1999 (if the current annual fee legislative authority is extended), and fees would be rebaselined only if there was a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees.

Based on the program changes that have occurred since the baseline fees were established in FY 1995 and the Nuclear Energy Institute's (NEI) concerns about the 8.4 percent annual fee increase in FY 1997, the staff has calculated the FY 1998 annual fees both by the percent change method and by rebaselining. The percent change method would result in a 0.1 percent increase in annual fees for all classes of licensees as compared to FY 1997. Rebaselining would result in a 4-5 percent reduction in annual fees for operating power reactors, but

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would increase fees between approximately 3 and 30 percent for fifteen classes of materials licensees, and between approximately 50 to 700 percent for four classes of materials licensees. Attachment 1 compares the annual fees developed by both methods for representative categories of licenses.

This paper addresses the advantages and disadvantages of both methods for determining the FY 1998 annual fees. We plan to incorporate the Commission's decision on this matter in the proposed FY 1998 fee rule which I plan to sign by March 19, 1998.

In addition to the proposed FY 1998 annual fees, we plan to include several administrative changes to Parts 170 and 171 in the FY 1998 proposed rule for public comment. These administrative changes are summarized in Attachment 2.

This paper also provides information on planned efforts to address concerns regarding annual fees for licensees who are in decommissioning or hold possession only licenses, including decommissioning reactors' storage of spent fuel.

BACKGROUND:

A. Methods for Determining Annual Fees

As required by Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, the NRC establishes licensing, inspection and annual fees each fiscal year to recover approximately 100 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund. For FY 1991 through FY 1995, the first five years under OBRA-90, the annual fees were established by determining the regulatory costs attributable to each of the eight classes of licensees established for annual fee purposes. This method, rebaselining, resulted in wide fluctuations, both increases and decreases, in the annual fee rates by individual category from year to year. These fluctuations were caused primarily by decreases in the number of licensees paying annual fees, especially during the first few years of 100 percent fee recovery, and changes in the resources allocated to the various programs.

Licensees complained about the unpredictability of the annual fees, indicating that they did not have sufficient warning to adjust prices and contracts to recover the increases. In response to these concerns, in the statement of considerations supporting the FY 1995 proposed fee rule the NRC requested comments on a proposal that base annual fees be established in FY 1995, and for the next four years, if the 100 percent fee recovery requirement was extended, the annual fees be adjusted only by the percent change in the NRC's total budget and the amount to be collected under Part 170 (the percent change method). Commenters agreed that the proposed change represented a simplification and streamlining of the fee-setting procedures, was necessary to eliminate the large swings in annual fees that had occurred in past years and allowed for greater predictability of fees. With this support from commenters, the NRC adopted the proposed methodology in the statement of considerations for the final FY 1995 fee rule, stating that the percent change method would be used for the next four years unless there was a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees.

Table I below summarizes the budgeted amounts to be recovered for FY 1995 through FY 1997, and the annual percent change in annual fees.

TABLE I

<u>FY</u>	<u>Budgeted amount to be recovered in fees</u>	<u>Annual fee change from previous year</u>
1995	\$503.6 million	Base year
1996	\$462.3 million	- 6.5 percent
1997	\$462.3 million	+ 8.4 percent

The decrease in FY 1996 annual fees was attributable primarily to the 5.7 percent reduction in the NRC's budgeted amount to be recovered through fees and a \$6 million over-collection available from FY 1995.

Although the amount to be recovered through fees did not change from FY 1996, the FY 1997 annual fees increased by 8.4 percent. This increase resulted from several factors: (1) a substantial reduction in projected Part 170 fees, largely from reductions in resources devoted to reviews of applications for standard plant and reactor operating licenses; (2) a reduction in the number of licensees paying annual fees, largely the result of one reactor permanently ceasing operations and the March 1997 relinquishment of regulatory authority to Massachusetts over some 425 materials licenses; (3) several million dollars less in collections received in the fiscal year as a result of billings from an earlier fiscal year; (4) a slight increase in the small entity subsidy, and (5) establishing an allowance for bad debt and unpaid bills, to help assure that the agency would meet its obligation to collect approximately 100 percent of its budget authority. Because the amount for fee recovery in FY 1997 remained the same as in FY 1996, it was determined that rebaselining was not warranted for FY 1997.

The FY 1997 final fee rule went into effect on July 28, 1997, and on that date NEI filed a petition for reconsideration of the final rule due to the increased annual fees. The Commission denied NEI's petition on October 1, 1997. However, NEI in its response to the Commission decision continued to express concerns about the annual fees, particularly the allocation of fees under Part 171 to compensate for a reduction in fees recovered under Part 170.

B. Annual Fees for Decommissioning Reactors

The long-standing policy of not assessing annual fees to those licensees who are in decommissioning or hold a possession only license is based on the premise that annual fees should be assessed only when a licensee receives a benefit from the NRC. Under current Commission policy, the benefit the NRC provides a licensee is the authority to use licensed material. This policy is applied to all classes of licensees, not just power reactors. The current policy is based on the premise that if a licensee chooses to voluntarily relinquish its authority to operate, the licensee has said that it no longer desires a benefit from the NRC, and fairness dictates that an annual fee not be assessed. We note that most of the generic activities (e.g.,

rulemaking and research) whose costs are recovered through annual fees are not applicable to these entities.

On the other hand, the current practice raises fairness and equity concerns because generic decommissioning and reclamation activities support both licenses authorizing operations and those limited to decommissioning or possession only. This becomes a larger problem for operating licensees, whose annual fee bill encompasses these costs, as the number of licensees in decommissioning or holding possession only licenses increases.

In addition to licenses issued under Part 50, some power reactors also hold licenses issued under other regulations. For example, some hold licenses issued under Part 72 for independent spent fuel storage installations, and some hold quality assurance approvals issued under Part 71 for shipping casks. Some materials licensees in decommissioning may also hold other NRC licenses. Although licensees are not assessed annual fees for licenses they hold which authorize possession only or decommissioning activities only, the existing fee policy does not extend to other NRC licenses they may hold. Therefore, reactor licensees are not assessed an annual fee for a Part 50 possession only license, but are assessed an annual fee for a Part 72 independent spent fuel storage installation. We understand that the Commission is looking at this issue from the perspective that it could result in a possible disincentive for licensees to pursue spent fuel storage under Part 72 versus spent fuel storage under Part 50.

The issue of annual fees for licensees in decommissioning or holding possession only licenses has broad implications and affects all classes of licensees, including decommissioning reactor licensees who store spent fuel. Unless the Commission directs otherwise, we plan to work with the program offices to study all aspects of the current policy and identify possible alternatives for Commission consideration once the evaluation is completed. We will note in the statement of considerations for the FY 1998 fee rule that we are examining this area and expect to reflect the results of our examination in the FY 1999 fee rule.

DISCUSSION:

A. Method for Determining FY 1998 Annual Fees

Based on not only the changes that have occurred in the agency's programs since the baseline fees were established in FY 1995, but also concerns raised by power reactor licensees and NEI about the 84 percent annual fee increase from FY 1996 to FY 1997, staff has calculated the FY 1998 annual fees by both the percent change method and by rebaselining. The calculations assume prorated annual fees for the Zion 1 and 2 Part 50 licenses based on Commonwealth Edison's announced plans to shut down the two plants early in 1998. Both methods also take into account other changes to the number of licensees paying fees, such as the elimination of some 200 Part 71 transportation quality assurance approvals as a result of the Part 34 final rule promulgated in 1997 that incorporates these approvals into existing radiography licenses.

Table II below shows the FY 1995 baseline annual fees and the FY 1998 annual fees as determined by both the rebaselining and percent change methods.

TABLE II
(dollars in millions)

Total Annual Fee Amounts
(Budget Allocations Less Part 170 Fees)

Class	FY 1995 Baseline	FY 1998	
		Rebaselining Method	Percent Change Method
Power Reactors	\$317.3	\$300.9	\$315.0
Non-power Reactors	.3	.3	.3
Fuel Facilities	12.3	19.2 ¹	17.1 ¹
ISFSI's	2.2	7.9	3.1
Transportation	4.7	3.5	3.0
Rare Earth Facilities	.1	.1	0.6
Uranium Recovery	2.3	4.6	2.4
Other Materials	29.3	30.0	25.0

For FY 1998, the total NRC budget to be recovered through Part 170 and Part 171 fees is \$7.5 million less than in FY 1997. There also has been an insignificant change in the estimated amount to be collected in Part 170 fees and the amount of the billing adjustment for uncollected fees needed to assure 100 percent fee recovery. In addition, as in FY 1997, there is no over-collection from the prior fiscal year. Consequently, the total amount to be recovered in Part 171 annual fees is \$6.4 million less in FY 1998 than in FY 1997. However, using the percent change method, the FY 1998 annual fees would increase slightly, by 0.1 percent, due largely to the decrease in the number (the equivalent of 2.5 reactors) of reactor licensees paying fees. Although this is only a slight increase, considering the FY 1995 fee policy provision on when to rebaseline, power reactors' concerns about the 8.4 percent annual fee increase in FY 1997, and the program changes that have occurred since the last rebaselining in FY 1995, using the percent change method for determining the FY 1998 annual fees may have greater litigative risks than rebaselining, because the power reactors may claim they are being overcharged.

However, there are significant issues raised by rebaselining for FY 1998. Using the rebaselining method, the FY 1998 annual fees for some classes would increase dramatically, without much advance notice. For four classes, independent spent fuel storage, transportation cask users, uranium recovery, and fuel cycle licensees, the increases would range from approximately 50 percent to more than 700 percent. Thus, the problems that were solved by going to the percent change method would resurface.

¹ Includes approximately \$5.2 million in annual fees for the two Certificates of Compliance issued to the United States Enrichment Corporation to operate the gaseous diffusion plants at Paducah, Kentucky, and Piketon, Ohio. Because the NRC assumed regulatory jurisdiction over the two plants from DOE on March 3, 1997, the plants were added to the fuel facility annual fee class beginning in FY 1997.

The increases under rebaselining for the four classes primarily result from: (1) increased agency efforts in the specific areas, (2) reduced Part 170 collections as more effort is expended on generic or other activities which are not fee recoverable under Part 170, and (3) fewer licensees in certain classes to pay annual fees. Specific factors contributing to the increases for the four classes are discussed in Attachment 4.

Obviously, rebaselining would cause concerns for those licensees affected by the large increases, similar to the concerns which resulted in adoption of the percent change method in the FY 1995 fee rule. Based on past experience, this will likely result in numerous letters from these licensees protesting the large increases. We can also expect a large volume of correspondence from other materials licensees, even though their increases are not as large as the increases for the four classes discussed above, because those increases affect categories with large numbers of smaller licensees. It is unlikely that reactor licensees would object to rebaselining because their annual fee rates would decrease by 4-5 percent from FY 1997.

Based on concerns associated with both the percent change and the rebaselining methods, the staff has identified the following advantages and disadvantages of each for determining the FY 1998 annual fees:

Percent Change Method for FY 1998

Advantages

1. Would result in a minimal increase over the FY 1997 annual fees.
2. Would continue the policy of stabilizing fees, a major objective of the FY 1995 fee rule which addressed licensee concerns about the unpredictability of fees.
3. All classes of licensees would be minimally impacted by the same percentage increase.

Disadvantages

1. Licensees may question whether the agency has reached the threshold for rebaselining as defined in the FY 1995 fee rule. As a result, this option appears to pose some litigative risk.
2. Postponing rebaselining could result in even greater increases in annual fees when NRC rebaselines, if current resource allocation trends continue.

Rebaselining Method for FY 1998

Advantages

1. More accurately reflects budgeted costs for each class of licensee.
2. If current resource allocation trends continue, would lessen the impact of postponing rebaselining for at least one more year.

3. Addresses fairness concerns raised by power reactors, including those in NEI's petition.

Disadvantages

1. Would result in very large increases for certain classes of materials licensees and therefore destabilize fees for these classes. Vigorous protests can be expected from these licensees.
2. Large increases in annual fees with relatively short notice may not allow licensees sufficient time to budget for the increases.

The total agency budgeted amounts to be recovered through fees for FY 1997 and FY 1998 are shown in Table III below.

TABLE III
(dollars in millions)

	<u>FY 1997</u>	<u>FY 1998</u>
Total budget authority	\$476.8	\$472.8
Non-fee base funds	<u>- 14.5</u>	<u>- 18.0</u>
Fee recovery amount	\$462.3	\$454.8

As Tables II and III show, there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. Therefore, as in FY 1996 and FY 1997, rebaselining is determined to be not required for FY 1998 under the conditions for rebaselining outlined in the statement of considerations for the FY 1995 rule. In addition, there are several factors that may lead to major changes to the fee structure and/or amounts to be recovered through annual fees for FY 1999, which would argue against rebaselining for FY 1998. Rebaselining in FY 1998 and again in FY 1999 would undoubtedly resurface licensees' major concerns about the unpredictability of fees. At this time there is uncertainty as to whether the 100 percent fee recovery requirement will be extended beyond FY 1998. There would likely be a major change in the annual fee structure for FY 1999 if the 100 percent fee recovery requirement is not extended, or if the amount to be recovered is reduced. Also, as described below, staff plans to evaluate the issue of annual fees for licensees in decommissioning or with possession only licenses. Completion of this evaluation may offer the potential for assessing annual fees to these licensees. There should also be an increase in Part 170 collections for FY 1999 if the proposed administrative changes for FY 1998 described in Attachment 2, such as billing for overtime hours expended for licensing and inspection activities and billing full cost for resident inspectors, are adopted. This in turn would decrease the amounts to be recovered through annual fees if all other factors remain the same. Prior to the FY 1999 fee rule, we will examine other activities whose costs are recovered from annual fees to determine if costs should be recovered under Part 170. This could further reduce annual fees.

Because the specific criteria for rebaselining have not been met, and based on the potential for major changes to the annual fee structure in FY 1999 and concerns about destabilizing fees, it is recommended that the percent change method for determining annual fees be continued for FY 1998, as indicated in the FY 1995 fee rule.

B. Fees for Reactors in Decommissioning

The Commission has surfaced an issue regarding a potential disincentive that arises from the NRC fee policy of assessing annual fees for Part 72 licensees but not for Part 50 "possession only" licensees that forgo an ISFSI in favor of spent fuel pool storage.

We have reviewed this issue and have determined that there is no viable short-term resolution. The NRC must promulgate the FY 1998 fee rule in time to recover approximately 100 percent of its budget authority prior to September 30, 1998. Attachment 3 reflects the schedule we need to meet in order to satisfy this requirement. Consequently, we are concerned there is insufficient time to develop and analyze the necessary cost data and fully evaluate all aspects of this important issue in order to include an alternative to the current policy in the FY 1998 proposed rule for notice and comment. In addition, agency policies and guidance with regard to decommissioning are still emerging. For example, in the near future the Executive Director for Operations will be providing the Commission with an update of the staff's plan for implementing an innovative approach to regulation of decommissioning, as requested in the April 3, 1997, Staff Requirements Memorandum for Direction-Setting Issue No. 24 (DSI-24), "Power Reactor Decommissioning."

Given the schedule for the FY 1998 fee rule and the scope of this matter, unless the Commission directs otherwise, a study group, including staff from the program offices, will be established to examine the full spectrum of issues related to annual fees for licensees in decommissioning or holding possession only licenses, including spent fuel storage, and evaluate alternatives to the current fee policy. The results will be provided to the Commission upon completion of the evaluation, with the intention of including the Commission decision in the FY 1999 fee rule.

C. Other Changes to Parts 170 and 171

In addition to updating the annual fees, we plan to include in the proposed FY 1998 fee rule for public comment several other changes to Parts 170 and 171. These changes are summarized in Attachment 2.

RECOMMENDATION:

Because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, and based on the potential changes to the fees for FY 1999 and concerns about destabilizing fees, I recommend that the Commission approve the percent change method for determining the Part 171 annual fees for FY 1998.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the General Counsel believes the recommended action to determine the FY 1998 annual fees by the percent change method is defensible, but does pose some increased litigative risk relative to the use of a rebaselining approach for FY 1998. The Office of the Executive Director for Operations has reviewed and concurred in this paper. The Office of the Chief Information Officer has been provided a copy for information purposes.

SCHEDULING:

I request a Commission decision on this paper within two weeks, in order to provide sufficient time to incorporate the decision in the FY 1998 proposed rule, obtain public comments, and publish a final rule to recover approximately 100 percent of the budget in FY 1998. I further request that this paper not be made available to the public because it is predecisional and addresses, in part, legal considerations.



Jesse L. Funches
Chief Financial Officer

Attachments: 1. Comparison of Annual Fees
2. Additional Changes to Parts 170 and 171
3. Estimated Schedule, FY 1998 Fee Rule
4. Factors Contributing to Increases Under Rebaselining

cc: SECY
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SECY NOTE: Commissioners' completed vote sheets/comments should be provided directly to the Office of the Secretary by c.o.b. Friday, March 6, 1998.

Commission staff office comments, if any, should be submitted to the Commissioners NLT March 4, 1998, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

Comparison of Annual Fees (Per License)
For Representative License Fee Categories
(Accounts for Zion 1 and 2 out of Fee Base 2/15/98)

<u>Category</u>	<u>FY 1997</u>	<u>FY 1998</u>			
		<u>Rebaseline Method</u>	<u>Change To FY 1997</u>	<u>Percent Change Method</u>	<u>Change To FY 1997</u>
Power Reactors	\$2,978,000	\$2,846,000	(4.4%)	\$2,980,000	0.1%
HEU Fuel Facility	2,606,000	2,836,000	9%	2,607,000	"
Uranium Enrichment	2,606,000	2,987,000	15%	2,607,000	"
LEU Fuel Facility	1,279,000	1,400,000	10%	1,280,000	"
UF ₆ Conversion	648,000	1,024,000	58%	649,000	"
Rare Earth Facilities	22,300	47,000	212%	22,300	"
Spent Fuel Storage	283,000	721,000	250%	283,000	"
Uranium Mill	61,800	300,000	485%	61,800	"
Solution Mining	34,900	252,000	722%	34,900	"
Disposal 11e(2)	45,300	185,000	408%	45,400	"
Nonpower Reactor	57,300	58,000	1.5%	57,300	"
Broad Scope Medical	23,500	27,200	15%	23,500	"
Radiographer	14,100	15,000	7%	14,100	"
Well Logger	8,200	8,800	7%	8,200	"
Other Medical	4,700	5,400	14%	4,700	"
Gauge User	1,700	2,100	23%	1,700	"
Transportation Cask User	1,000	3,700	370%	1,000	"

ADDITIONAL CHANGES TO PARTS 170 AND 171

The following administrative changes to 10 CFR Parts 170 and 171 will be included in the FY 1998 proposed rule for notice and comment.

The proposed changes would:

1. Revise the two professional hourly rates in 10 CFR 170.20 which are used to determine the 10 CFR 170 fees. The proposed FY 1998 hourly rate for the reactor program is \$125 per hour, compared to \$131 per hour in FY 1997. The proposed FY 1998 hourly rate for the materials program is \$121 per hour, compared to \$125 per hour in FY 1997. The materials license fees in 10 CFR 170.31, which are based on the average costs to perform application and amendment reviews, would also be adjusted downward to reflect the revised materials program hourly rate.

The decreases in the hourly rates are a result of excluding the total surcharge costs, including associated overhead and an allocation for management and support, from the FY 1998 hourly rate calculations. These costs are recovered through the 10 CFR 171 annual fees. The excluded amount is larger than the amount excluded in previous years, leading to a decrease in the hourly rate for both programs.

2. Include Section Chiefs as overhead in the calculation of the hourly rate, and any specific Section Chief effort expended for licensing reviews and inspections will not be billed.

This change is consistent with the current budget structure, which includes Section Chiefs in overhead.

3. Include the following activities for cost recovery under Part 170:

- (a) Full cost recovery for resident inspectors.

Currently, resident inspectors' time is billed to the site only if the time is reported to a specific inspection report number. The remaining costs related to the resident inspector are recovered in the annual fees assessed to all licensees in the class. Under the premise that the assignment of a resident inspector to a site is an identifiable service to a specific licensee, the proposed rule would provide that all of the resident inspector's official duty time would be billed to the specific plant under Part 170.

- (b) Costs expended within 30 days after the issuance of an inspection report.

10 CFR 170.12 provides that costs will be assessed for completed inspections. Currently, for fee recovery purposes, an inspection is considered to be completed when the inspection report is issued. The result is that costs expended after the report is sent are recovered through the annual fees imposed

on all licensees in that class. The staff's review and analysis of the inspection cost data indicates that in FY 1997 approximately 3,700 staff hours were expended after the inspection reports were issued. This equates to approximately \$500,000 in costs that were not billed to the specific licensees under Part 170. More than 80 percent of the hours were expended within 30 days after issuance of the inspection reports.

Activities that occur after the inspection report is issued are identifiable services for specific licensees. However, in order to establish a clear interval during which accumulated costs would be billed to the applicant or licensee, the proposed change to Part 170 would recover costs from the specific licensee for activities that occur within 30 days after the issuance of the inspection report. This change would result in recovery of 80 percent of these costs under Part 170, and would continue to provide applicants and licensees with a definitive point at which billing would cease.

(c) Overtime

The hourly rates in 10 CFR 170.20 include overtime costs; however, currently only work performed during regular hours is billed to the applicants and licensees. An analysis of overtime data for FY 1997 indicates that approximately 15,000 compensated overtime hours were reported for licensing and inspection activities. Using the FY 1997 hourly rates, this would have resulted in approximately \$1.9 million in additional fee recovery under Part 170 in FY 1997 if the compensated overtime hours had been billed.

To more fully recover licensing and inspection costs under Part 170, the proposed rule will indicate that compensated overtime hours expended for reviews of applications and for inspections would be billed to the specific applicant or licensee, at the normal hourly rate.

4. Introduce in-progress billing for inspections

Currently, inspection costs are billed only after the inspection is completed, i.e., when the inspection report is issued. As a result, in some cases inspection costs accumulate over several billing cycles, and the licensee receives one bill for these accumulated costs rather than being billed as the costs are expended. The FY 1998 proposed rule would indicate that, in selected cases, inspection costs would be billed at the end of the billing period in which they accrue. The integrated financial system under development would accommodate in-progress billing for inspections; however, until the system is available staff plans to in-progress bill for inspections in selected cases where it is determined that such billing would be in the best interest of the agency and the licensee. For example, costs for inspection efforts underway at Millstone have not yet been billed because the inspection reports have not been issued. Staff has contacted Millstone, and with the licensee's concurrence will issue a bill for inspection costs that have accumulated if it is determined that the accumulated costs warrant an exception to the billing method currently provided in 10 CFR 170.

The FY 1998 proposed fee rule will indicate that inspection costs may be billed prior to issuance of the inspection report, after coordination with the licensees to establish a mutually-agreeable billing schedule. When the system is available to routinely bill for accumulated inspection costs at a specified interval, the staff intends to in-progress bill for all inspections. The staff is seeking early comment on the long-term policy in the FY 1998 proposed rule, and the necessary revisions to 10 CFR 170 would be made in future rulemaking when the system is available to accomplish this.

5. Provide additional methods of payments, such as Automated Clearing House (ACH) and credit cards.

Currently, payments may be made electronically by Fedwire (a funds transfer system operated by the Federal Reserve System) or by check. ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Offering additional electronic payment methods will not only expedite the payment process, but will also save licensees considerable time and money over a paper-based payment system. ACH offers several advantages over Fedwire, which most utilities currently use to pay NRC invoices. ACH is the least expensive of all electronic collection systems, one of the most secure networks in which to transmit payments, and is easy to use. Electronic funds transfer using ACH is quickly becoming the dominant, although not exclusive, method of conducting business with government agencies. Additionally, ACH provides NRC increased flexibility to electronically interact with the licensees. Our intermediate range plans are not only to send invoices electronically, but also to provide refunds electronically.

Credit card payments would be accepted for small dollar, large volume payments.

6. Propose to eliminate mailing of the final rule to all licensees. The final rule would be available on the Internet, and copies would be mailed to licensees upon request.

Licensees would continue to receive copies of the proposed rule, which would contain information on how to obtain copies of the final rule. This change would eliminate most of the costs associated with mailing approximately 8000 copies of the final rule.

**ESTIMATED SCHEDULE
FY 1998 FEE RULE**

02/19/98	Forward Paper to Commission
Week of 02/23/98	Meet with Commissioner Assistants
03/05/98	SRM on FY 1998 fee revisions
03/10/98	Draft proposed rule for office comment and concurrence
03/17/98	Adjust proposed rule based on comments and forward to CFO
03/19/98	CFO signs proposed rule
03/26/98	Federal Register publishes proposed rule
04/25/98	30 day comment period ends
04/29/98	Identify and meet with OGC, etc., on major comments/issues and staff recommendations
05/06/98	Prepare draft summary of comments, resolution of issues and staff recommendations for CFO consideration
05/13/98	Draft final rule for OGC, OIP and EDO comment and concurrence
05/18/98	Receive OGC, OIP and EDO comments and concurrences
05/21/98	Adjust final rule based on comments
05/22/98	Final rule to CFO for signature
05/26/98	CFO signs final rule and transmits copy to Commission for 5 working days
06/02/98	Commission 5 working day period expires
06/09/98	Federal Register publishes final rule
08/08/98	Final rule effective/bills dated. Payments are due within thirty days. Schedule permits sending second notice for unpaid invoices prior to end of the FY.

FACTORS CONTRIBUTING TO INCREASES UNDER REBASELINING

Examples of factors contributing to increased annual fees under rebaselining for four classes of materials licensees are described below:

Independent Spent Fuel Storage Installations

Budgeted resources for the independent spent fuel storage program increased from 9.3 FTE and \$350 thousand in contract support for FY 1995 to 29.3 FTE and \$2.1 million in contract support for FY 1998. It was anticipated that much of the increase would be recovered through licensing and inspection fees assessed under Part 170. However, significant resources have been devoted to efforts for DOE and vendor specific safety issues which are not billable under Part 170. For example, considerable effort is currently being expended for the following DOE projects: (a) application for an ISFSI to store fuel debris from the TMI-2 reactor at the Idaho National Engineering and Environmental Laboratory; (b) the topical report on a Dry Transfer System, used to transfer individual spent fuel assemblies from a storage cask to a transport cask, without having to place the fuel back in the spent fuel pool; and (c) the transfer of the Fort St. Vrain ISFSI license from Public Service of Colorado, to the DOE. The review efforts for DOE are not billable under Part 170, thus these costs are included in the surcharge assessed to all classes of licensees.

Additionally, the staff is addressing vendor specific safety issues that do not involve a license application or an inspection, and therefore, the costs are not billable under Part 170 but rather are included in the annual fee assessed to the licensees who store spent fuel in an ISFSI (vendors are not subject to annual fees). These safety issues include: (a) the May 28, 1996, hydrogen ignition at the Point Beach nuclear power plant, during welding operations on the shield lid of a VSC-24 storage cask, that revealed an unanticipated chemical reaction between the Carbo Zinc 11 coating inside the cask and the borated water in the spent fuel pool; (b) problems with VECTRA Technologies' quality assurance program and design control processes (component fabrication, use of materials and fabrication methods other than those specified in the cask certificate, procurement of materials from unapproved suppliers, and poor documentation of shop and weld repair procedures); and (c) welding issues at Sierra Nuclear Corporation, vendor of the VSC-24 cask, that revealed significant failures with SNC's QA and corrective action programs to identify and correct design and fabrication deficiencies.

Lastly, there are other staff efforts that can not be recovered under Part 170 license fees. These include enforcement, rulemakings, hearings, and interactions with licensees and applicants not related to a specific application or inspection. Resource expenditures for these activities have increased due to poor licensee performance and insufficient improvement, correction of implementation issues in our storage and transport regulations, public opposition to a privately-owned large ISFSI, and an increase in the number of applications as reactor licensees are required to provide for their own spent fuel storage, in the absence of a federal facility.

Furthermore, resolution of conflict of interest concerns in using a DOE laboratory to review applications required expenditure of significant NMSS management and staff resources.

Transportation

For the transportation program, more than 200 quality assurance (QA) approvals of transportation cask users were eliminated with the FY 1997 revision to Part 34. However, due to significant QA program deficiencies by some licensees, budgeted resources were not reduced in anticipation of conducting comprehensive, performance-based reviews of transportation cask fabricators. This reduction in the number of entities subject to annual fees results in an increase in the annual fees assessed to the remaining approval holders under rebaselining. Moreover, the DOE holds fewer certificates of compliance than in previous years, resulting in a decrease in the annual fee assessed to DOE for generic transportation costs, and a resulting increase in the annual fees assessed to transportation cask users and fabricators under rebaselining.

As is the case for the independent spent fuel storage class of licensees, the staff is addressing safety issues that do not involve a program approval or amendment, and therefore, the costs are not billable under Part 170 but rather are included in the annual fee assessed to transportation cask users. These activities include significant quality assurance (QA) program implementation deficiencies at Amersham and SPEC. Finally, inspection costs are not being fully recovered under Part 170 because some of the staff currently participating in inspections are in a training status and have not attained inspector certification.

Uranium Recovery

This area involves approximately 50 sites, including approximately 30 commercial licensees and 20 DOE mill tailings remedial action sites. However, only 10 of the commercial licensees hold operating licenses. Consequently, generic costs associated with all the commercial uranium recovery facilities are recovered through annual fees assessed to these 10 licensees. The costs of the program activities related to DOE are recovered through annual fees assessed to DOE.

The budgeted resources for the uranium recovery program have increased by approximately 4 FTE and \$1 million in contract support since FY 1995. The total number of licensees has remained stable (although allocation of costs between different categories within the class has changed). In addition to the increase in budgeted resources and a corresponding increase in the surcharge allocated to the class, several other factors contribute to the annual fee increases under rebaselining. For example, the annual fee assessed to DOE for the Title I program represents a smaller percentage of the program in FY 1998 than in FY 1995. In addition, in the past year the staff has had to divert considerably more resources from casework that would be billable under Part 170 to efforts that are not billable under Part 170, such as: (a) contested hearing support; (b) evaluating allegations; (c) addressing 2,206 petitions; (d) responding to Congressional letters; (e) developing Generic Letters and Information Notices; (f) holding industry workshops; and (g) handling unexpected complications associated with preparation of three Standard Review Plans. Although many of these activities benefit all uranium recovery licensees (those currently charged an annual fee because they are operating as well as those who currently do not pay annual fees because they have possession only licenses), the costs are recovered through annual fees assessed to only the small number of operating facilities.

Fuel Cycle

The increase in the rebaselined annual fees for fuel cycle licensees ranges from 9 percent for Category I fuel facilities to 58 percent for the UF₆ conversion facility, and more than 200 percent for rare earth facilities as compared to 1997 fees. The larger increase in annual fees for the UF₆ conversion facility results from revisions to the NRC Fuel Cycle Regulatory Program Effort/Fee Determination table which breaks out the regulatory effort associated with each process category based on safety and/or safeguards risk and significance considerations. A new process category, "Liquid UF₆," was added to the table; this category is only applicable to the gaseous diffusion plants and the UF₆ conversion facility. For the UF₆ conversion facility, this new process category represents an additional regulatory effort factor increase of 42 percent over past years' regulatory effort. For rare earth facilities, a decrease in the estimated amount to be recovered through Part 170 fees and an increase in the amount allocated for surcharge costs result in a substantial increase in the annual fees assessed to the small number of licensees in this category. The additional fee increases for all fuel facilities resulted from an approximate 10 percent increase in FTE since 1995 and a general increase in NRC operating expenses.