1/23/04 PJR — Comments

VIII. Regulatory Flexibility Analysis

IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 92 percent of its FY 2004 budget authority, less the amounts appropriated from the NWF, through fees. In the Energy and Water Development Appropriation Act, 2004 (Pub. L. 108-137), Congress appropriated $626.1 million to the NRC for FY 2004. This sum includes ~~$7.3 million for the Office of the Inspector General and~~ $33.1 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately $545.6 million.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established 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 costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of

applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 92 percent of its FY 2004 budget authority~~, including the budget authority for its Office of the Inspector General~~, less the appropriations received from the NWF. The NRC's total budget authority for FY 2004 is $626.1 million, of which approximately $33.1 million has been appropriated from the NWF. Based on the 92 percent fee recovery requirement, the NRC must recover approximately $545.6 million in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2004 is $19.3 million more than the amount estimated for recovery in FY 2003.

The FY 2004 fee recovery amount is reduced by a $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 fee rule was published. This leaves approximately $542.1 million to be recovered in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $139.7 million will be recovered in FY 2004 from part 170 fees and other offsetting receipts. For FY 2004, the NRC also estimates a net adjustment of approximately $2.0 million for FY 2004 invoices that the NRC estimates will not be

programs) is $156 per hour ($276,598 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2003 final fee rule, the reactor and materials program rates were $156 and $158, respectively.

The primary reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the materials program, the increase is offset by a reduction in overhead costs and allocated agency management and support costs under this program.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are recovered through part 170 fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which

activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2003 final fee rule, the reactor and materials program rates were $156 and $158, respectively.

The primary reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the materials program, the increase is offset by a reduction in overhead costs and allocated agency management and support costs under this program.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs). All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are recovered through part 170 fees.

b. All costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's ~~direct~~ costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,342,000
Spent Fuel Storage/Reactor Decommissioning	207,000
Nonpower Reactors	62,600
High Enriched Uranium Fuel Facility	5,342,000
Low Enriched Uranium Fuel Facility	1,791,000
UF_6 Conversion Facility	768,000
Conventional Mills	14,600
Transportation:	
Users/Fabricators	91,400
Users Only	7,400
Typical Materials Users:	
Radiographers	12,000
Well Loggers	4,700
Gauge Users	1,900
Broad Scope Medical	25,100

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA-90, as amended. Based on the FY 2001 Energy and Water Development Appropriations Act which 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 is 90 percent in FY 2005, the total surcharge costs for FY 2004 will be reduced by approximately $47.4 million. The total FY 2004 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in

Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.3	6.8	1.2	1.5
Materials Users	18	0.7	3.2	0.6	1.2
Transportation	---	---	1.2	0.2	0.2
Rare Earth Facilities	---	---	0.1	0.0	0.0
Uranium Recovery	---	---	0.4	0.1	0.1
TOTAL SURCHARGE	100	3.8	100.0	17.4	21.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Website address http://www.nrc.gov/reading-rm/adams.html. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

a. Fuel Facilities

The FY 2004 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $24.7 million compared to $27.0 million in FY 2003. The annual fee decrease is attributable to the increase in part 170 fees for the fuel facility class due to an increase in the Mixed-Oxide Fuel effort. The annual fees are allocated to the

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. Next, 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, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VI.

TABLE VI. - EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (in percent) Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0)	76 (57.1)
Enrichment	2	70 (27.7)	34 (25.6)
Low Enriched Uranium Fuel	3	66 (26.1)	18 (13.5)
UF_6 Conversion	1	12 (4.7)	0 (0)
Limited Operations Facility	1	8 (3.2)	3 (2.3)