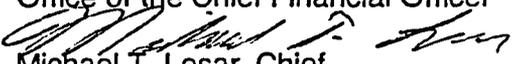


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



March 30, 2004

MEMORANDUM TO: Ann Norris
Office of the Chief Financial Officer

FROM: 
Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: CONCURRENCE OF FINAL RULE, "REVISION OF FEE SCHEDULES;
FEE RECOVERY FOR FY 2004" (RIN AH37; PARTS 170 AND 171)

The Office of Administration has reviewed and concurs on the final rulemaking subject to our comments. We have attached a marked copy of the pages that presents our comments.

If you have any questions concerning this matter, please have a member of your staff contact Betty K. Golden at 415-6863 (BKG2), or me at 415-7163 (MTL).

Attachment: As stated

- Removed of the comment period classes
- comments may be submitted but not viewed

Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by email to pdr@nrc.gov. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov. Comments may also be viewed at the Federal eRulemaking Portal at <http://www.regulations.gov>.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Ann Norris, telephone 301-415-7807; or Tammy Croote, telephone 301-415-6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Background

- II. Response to Comments
- III. Final Action
- 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. Small Business Regulatory Enforcement Fairness Act

I. Background

For FYs 1991 through 2000, OBRA-90 (42 U.S.C. §2214), 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 (Pub. L. 106-377) 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. The Energy and Water Development Appropriations Act, 2004 (Pub. L. 108-137), was adjusted by the Consolidated Appropriations Act, 2004 (Pub. L. 108-199), Division H, Section 168(b) to authorize a 0.59 percent across-the-board rescission of NRC's net

Reciprocity Fees ✓

Comment. One commenter noted that Washington State licensees will experience a \$200 fee increase (from \$1,400 to \$1,600) when seeking reciprocity from the NRC. The commenter also noted that the proposed fee increases are warranted and appropriate.

Response. The NRC acknowledges the commenter's support of the NRC's establishment of fees. The NRC does note, however, that the comment is in error as to any increases in this fee. The reciprocity fee for Agreement State licensees who conduct activities under the reciprocity provisions of §150.20 remains \$1,500 in FY 2004, the same as it was in FY 2003, as set forth in the FY 2004 proposed fee rule. This fee is listed in the Schedule of Materials Fees at §170.31, category 16.

C. Specific Part 171 Issues.

1. Annual Fees for Materials Users, Including Small Entities ✓ ✓

Comment. One commenter, who is an operator of a small radiology and nuclear medicine outpatient laboratory, expressed concerns regarding fee increases for medical facilities. The commenter stated that there are many cost pressures on these facilities, and it is becoming more difficult for these facilities to operate profitably. The commenter expressed concern that increasing fees could result in decreasing the availability of quality healthcare in many areas of the country due to these types of medical facilities having to close.

0.59 percent across the board rescission of NRC's net budget authority enacted under the Consolidated Appropriations Act, 2004.

3. Annual Fees for Power Reactor Licensees.

Comment. One commenter stated that NRC fees represent a nontrivial percentage of a nuclear station's annual operating budget. This commenter stated that NRC fees place an even heavier burden, as a percentage of total plant operating and maintenance costs, on plants with comparatively smaller electrical output. The commenter suggested that NRC revisit its current annual fee assessment scheme for reactors, possibly basing a plant's annual fee on its licensed thermal power fraction of the total licensed thermal power of all 103 reactors with operating licenses.

Response. As ~~noted before~~ ^{required} by statute, the NRC's annual fees must "to the maximum extent practicable," bear a "reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." 42. U.S.C. 2214(c)(3). The NRC's part 171 annual fee per power reactor is derived by dividing the budgeted costs allocated to that class by the number of power reactors. (Note that this fee applies to all power reactors ^(currently 104) licensed to operate by the NRC ^{of which there} ~~are currently 104.~~) Hence, each power reactor is assessed an equal portion of the generic costs allocated to that class of licensee. Before FY 1995, the NRC did not assess uniform annual fees to reactors, but rather determined a reactor's annual fee based on a detailed analysis of vendor group, location, and other factors, such as type of containment. However, the NRC streamlined its fee program in FY 1995 (60 FR 32218; June 20, 1995) by establishing a uniform annual fee for power reactors, based on the fact that the difference in fees resulting from this more detailed

from the fee base (namely, all homeland security costs except those associated with fingerprinting, background checks, and security inspections). In its August 29, 2003, letter to the House Committee on Energy and Commerce, the Commission supported the fee recovery provisions of the Energy Policy Bill. The House has approved the Energy Policy Bill produced by the conference committee and the Senate started debate on the conference committee report. However, as of the date of this rule, no further action has been taken by the Senate or House on this bill. The successor to HR6, S2095, introduced in the current session of Congress, would also remove many homeland security costs from the fee base. The NRC will continue to support legislative efforts to remove homeland security costs from the fee base.

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In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budget and manner in which the NRC carries out its activities are not within the scope of this rulemaking. The NRC notes that its FY 2005 budget request for homeland security direct resources is \$41.9 million, which is down from the FY 2004 budget of \$51.1 million. This decrease reflects the completion of work on vulnerability assessments and mitigating strategies and the completion of the reviews of nuclear power plant security plans that include the revised design-basis threat.

2. NRC Budget.

Comment. Some commenters stated that NRC fees should reflect NRC efficiencies and provided suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently, without impeding operational safety. Commenters

Missing text? There seems to be a disconnect with this sentence. Not sure what the intended suggestion entail.

suggested that changes in NRC's regulatory approach, such as the reactor oversight process, as well as revised inspection, assessment and enforcement processes, should result in reduced fees. Some comments included suggestions to reallocate resources dedicated to inspection of areas of plants that have little or no safety significance, to efforts to risk-inform regulations, review license renewal applications and license new reactor designs. These comments also suggested that fewer resources should be applied to the oversight of materials licensees, because NRC Agreement States have taken over some of this work, and that NRC could enhance efficiency by accepting the groundwater quality assessments conducted by a state or the Environmental Protection Agency instead of performing them with NRC staff. These comments further encouraged NRC to proceed expeditiously to apply, as appropriate, the Reactor Oversight Process to fuel cycle licensees (uranium recovery, conversion, enrichment and fuel fabrication). Some comments expressed concern that while the NRC's obligation to recover its budget authority through fees decreases by 2 percent each year [until it reaches 10 percent in 2005], the total budget increase has more than offset this decrease.

Response. 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' suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressional budget process affords stakeholders and the public opportunities to comment, including oversight meetings, testimony, press briefings, etc. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget. However, the NRC

will continue efforts to ensure that the NRC carries out its statutory obligations in an efficient manner.

3. Fee Rule Communication and Timing



Comment. Several commenters raised concerns that the timing of issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles, while recognizing that, for FY 2004, the NRC published its proposed fee rule about two months earlier than last year. To address this issue, commenters suggested that the NRC publish an estimate of fees for the following year, coincident with issuance of the proposed fee rule each year. The commenters recognized that while it would likely be impossible for the NRC to offer exact projections, the Commission should be able to develop reasonable estimates of the next year's fees.

Response. The NRC acknowledges the concerns raised by these commenters. However, because the NRC does not know in advance what its future budgets will be (i.e., proposed budgets must be submitted to the Office of Management and Budget for its review before the President submits the budget to Congress for enactment), the NRC believes it is not practicable to project fees based on future estimated budgets. The NRC will continue to strive to issue its fee regulations as early in the fiscal year as is practicable to give as much time as possible for licensees to plan for changes in fees.

III. Final Action

Centrifuge Lead Cascade facility at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio. The fuel facility matrix has been updated to include the effort factors for this licensee.

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

TABLE VI. - EFFORT FACTORS FOR FUEL FACILITIES

<u>Facility type</u>	Number of <u>facilities</u>	<u>Effort factors</u> (in percent) →	
		<u>Safety</u>	<u>Safeguards</u>
High Enriched Uranium Fuel	2	91 (35.5)	76 (55.1)
Enrichment	2	70 (27.3)	34 (24.6)
Low Enriched Uranium Fuel	3	66 (25.8)	18 (13.0)
UF ₆ Conversion	1	12 (4.7)	0 (0)
Limited Operations Facility	1	8 (3.1)	3 (2.2)
Others	2	9 (3.5)	7 (5.1)

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Applying these factors to the safety, safeguards, and surcharge components of the \$21.6 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VII.

TABLE VII. - ANNUAL FEES FOR FUEL FACILITIES

<u>Facility type</u>	<u>FY 2004 annual fee</u>
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c. Power Reactors

The approximately \$320.3 million in budgeted costs to be recovered through FY 2004 annual fees assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2004 annual fee of \$3,080,000 per reactor.

Additionally, each power reactor licensed to operate will be assessed the FY 2004 spent fuel storage/reactor decommissioning annual fee of \$203,000, which is discussed in paragraph d below. This results in a total FY 2004 annual fee of \$3,283,000 for each power reactor licensed to operate.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2004, budgeted costs of approximately \$24.6 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. The costs are divided equally among the 121 licensees, resulting in a FY 2004 annual fee of \$203,000 per licensee.

e. Non-power Reactors

Approximately \$250,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2004. This amount is divided equally

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2004 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and complex materials site decommissioning activities not covered under Part 170), and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (e.g., reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.).

(2) The total FY 2004 surcharge allocated to the operating power reactor class of licenses is \$17.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2004 operating power reactor surcharge to be assessed to each operating power reactor is approximately \$165,000. This amount is calculated by dividing the total operating power reactor surcharge (\$17.2 million) by the number of operating power reactors (104).

(3) The FY 2004 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is \$900,000. The FY 2004 spent fuel storage/reactor decommissioning surcharge 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 part 72 licensee who does not hold a part 50 license is approximately \$7,800.