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

OFFICE OF THE
SECRETARY

April 15, 1994

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Assistant Secretary

SUBJECT: SECY-94-088 - REQUEST FOR SEED MONEY FOR STATE SEEKING 274b AGREEMENT

The Commission (with all Commissioners agreeing) has approved the staff's letter to Oklahoma which denies their request for seed money.

cc: The Chairman
Commissioner Rogers
Commissioner Remick
Commissioner de Planque
OGC
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

SECY NOTE: THIS SRM, SECY-94-088, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

POLICY ISSUE

(Notation Vote)

December 14, 1993

SECY-93-342

FOR: The Commission

FROM: James M. Taylor
Executive Director
for Operations

SUBJECT: IMPLEMENTATION OF THE ENERGY POLICY ACT OF 1992 REQUIREMENT TO REVIEW NRC FEE POLICY

PURPOSE:

To request Commission decisions and guidance on the results of the review of fee policy that is required by the Energy Policy Act of 1992.

CATEGORY:

This paper covers significant fee policy issues requiring Commission action.

SUMMARY:

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) to recover 100 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund by

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NOTE: TO BE MADE PUBLICLY AVAILABLE AT THE COMMISSION MEETING ON DECEMBER 21, 1993

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assessing fees. The Energy Policy Act of 1992 (EPA-92) requires that the NRC review its policy for assessment of annual fees under the OBRA-90, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. On April 19, 1993, the NRC published a notice that requested comments on NRC fee policies. The comment period expired August 18, 1993. The NRC received 566 comments in response to the notice.

Analysis of the comments received on the April 19, 1993, notice, and the staff's experience during the past three years administering the fee program to comply with OBRA-90 indicate two major concerns about the fairness and equity of the fees. The first major concern is that not all direct beneficiaries of NRC activities pay fees. Therefore, to recover 100 percent of the budget some licensees pay for activities that do not benefit them. The second major concern is that some licensees believe that fees for regulatory activities related to them are not commensurate with the benefits received. In addition, the staff has identified a concern that is not related to the equity and fairness issues. This concern is the amount of effort required o implement the current fee process.

The staff concludes that legislation is necessary to minimize these concerns. Accordingly, the staff recommends that the Commission pursue the following legislative changes:

1. Modify OBRA-90 to remove from the fee base costs for international activities, Agreement State oversight, the exempted fees for nonprofit educational institutions, and the amount of the fee reduction for small entities. This would minimize the major concern associated with NRC licensees paying for activities that do not benefit them. (This would reduce the amount to be collected by about $25 million or about 5 percent of the FY 1993 budget recovered through fees.)

2. Modify OBRA-90 to eliminate from the fee base a portion of the cost of generic regulatory activities that supports NRC and Agreement States material licensees. This would eliminate the concern that NRC material licensees' fees, which support the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received. (This would reduce the amount to be collected by about $15 million or about 3 percent of the FY 1993 budget recovered through fees.)

3. Modify the AEA to permit NRC to assess application and other fees (about $6 million) for specific services to all Federal agencies, so that other NRC licensees do not have to pay for the cost of these services that do not benefit them.[1]

4. Modify OBRA-90 to eliminate the requirement that NRC assess Part 170 fees so as to reduce the resources required to assess and collect fees. (If this option is adopted, the NRC could avoid spending roughly 10 FTEs and about $200,000 in contractual support for fees.)

The staff believes that if the Commission and Congress implement these recommendations, most of the concerns about fairness and equity of the fee schedules would be corrected. If these recommendations are implemented, this would require the NRC to recover approximately 90 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund.

Based on Commission decisions and guidance, the staff will convert this paper to a report that will be sent to the Congress and to the Office of Management and Budget. The staff does not plan to include draft legislation with the report to Congress. Specific implementing legislation would be developed in coordination with OMB after the report is sent to Congress. Given the likelihood of a Congressional hearing on fees in February 1994, the staff recommends that the decisions and guidance on this paper be made in a timeframe that would permit the Commission to submit the report to Congress by the end of January 1994.

The proposed fee rule for FY 1994 would implement the Commission policy decisions and other guidance resulting from this paper. Because the NRC should publish a proposed rule during the first quarter of calendar year 1994 to seek public comment on the recommended changes to the fee regulations, the staff recommends that the Commission make an exception to its normal rulemaking process by delegating to the EDO the authority to issue the proposed and final rules for FY 1994, as was done in FY 1992 and FY 1993. Additionally, the FY 1994 rule cannot reflect any proposed legislative changes because they will not be enacted in time.

BACKGROUND:

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as

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[1]This change would still be necessary if the requirement to assess Part 170 fees is eliminated, since the staff would want to assess an application fee to those agencies applying for new licenses who would not pay annual fees.

amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE)-administered Nuclear Waste Fund (NWF) for FYs 1991 through 1998 by assessing fees to NRC applicants and licensees. Two types of fees are required to recover NRC's budget authority. First, license and inspection fees, established by 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA) and the Atomic Energy Act (AEA), as amended, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are reviewing applications for the issuance of new licenses or approvals, amending or renewing licenses or approvals, and inspecting licenses. Second, annual fees, established by 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Since OBRA-90 was enacted, the NRC has published four final fee rules after evaluating over 1,000 public comments. On July 10, 1991, the NRC published the first rule that established fees to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule implemented Commission fee policy decisions and established the underlying basis and method for determining the hourly rate and fees. The Commission policy decisions and the fee methodology used for FY 1991 were also used in the final rules to recover approximately 100 percent of the FY 1992 and FY 1993 budget authority. The FY 1993 rule also included the results of the biennial review required by the Chief Financial Officers (CFO) Act of 1990. The purpose of that review was to ensure that fees and other charges imposed by the NRC reflect costs incurred in providing those services. The review resulted in significant fee increases for some materials licensees.

In April 1992, the NRC published a limited change to 10 CFR Part 171 to address licensee concerns about the unfair burden of fees on extremely small licensees. This change adjusted the maximum annual fee of $1,800 that was assessed licensees that qualify as a small entity under the NRC's size standards. A lower-tier small entity fee of $400 per licensed category was established for small businesses and nonprofit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993. In summary, the court supported the basic fee methodology, but it remanded two issues for the Commission to reconsider. One of the issues related to annual fees for nonprofit educational institutions. In response to the court decision, the Commission revoked the

exemption from annual fees for nonprofit educational institutions. On September 29, 1993, in response to a petition for reconsideration, the NRC published a proposed rule seeking public comment on the reinstatement of this exemption. The comment period expired October 29, 1993, and the staff expects the final rule concerning this matter to be submitted to the Commission in December 1993. The second remanded issue was the method of assessing fees for low-level waste (LLW) activities. In response to the court decision, the allocation method was changed in the final FY 1993 rule published July 20, 1993.

The Energy Policy Act of 1992 (EPA-92) directed the NRC to review its policy for assessment of annual charges under OBRA-90, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes needed in existing law to prevent placing an unfair burden on NRC licensees. Consistent with these requirements, the NRC requested public comment on its fee policy in a Federal Register notice published on April 19, 1993 (Enclosure 1). The 90-day comment period expired July 19, 1993, and was extended an additional 30 days to August 18, 1993. Although EPA-92 required only public comments on the annual fees assessed by the NRC under 10 CFR Part 171, the NRC also requested comments on 10 CFR Part 170 fee policies because of the interrelationship of 10 CFR Parts 170 and 171 fees.

By the close of the comment period, 566 comments were received from individual licensees or their representatives as follows:

Reactors	26
Fuel Facilities	11
Educational	46
Medical	20
Industrial	450[2]
Federal Agencies	5
State Agencies	8
	566

A listing of the commenters by group is included as Enclosure 2. Copies of the individual comments can be obtained from the Office of the Secretary or the Public Document Room.

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[2]Of the 450 comments received from industrial licensees, 405 were form letters supporting comments submitted by Troxler Electronic Laboratories, Inc., opposing increased annual fees assessed to gauge users.

DISCUSSION:

This policy paper is based on the staff's experience in responding to the comments, letters, and telephone calls received during the past three years of implementing OBRA-90; a court case involving annual fees; two petitions for rulemaking involving annual fees; and the comments received on the EPA-92 notice. This paper also considers the Office of the Inspector General review of fees that was submitted to the Commission on October 26, 1993.

The staff has made the following two assumptions to establish the scope for this fee policy review:

1. The public policy question of how to raise revenues (taxes versus fees) will only be addressed to the extent that changes to existing law are necessary to make the fees more fair and equitable. This assumption is consistent with past Commission positions.

2. The amount of the budget necessary for NRC to perform its safety mission will not be addressed.

The following areas that are fee related will not be addressed in this paper because these items are being presented to the Commission for review and decision separately:

- The merits of whether to exempt nonprofit educational institutions from fees. (This paper, however, addresses how these costs should be treated, assuming the exemption is reinstated.)

- Utilization of cost-center concepts in financial management. (This paper will note areas where the cost-center concept will help resolve a fee concern.)

- The merits of whether the NRC small entity size standards should be changed. (The staff is evaluating whether the small entity size standards should be changed based on the results of a survey of NRC licensees and the recent proposed rule published in the Federal Register by the Small Business Administration that would amend the Small Business Size Standards).

- The decisions and the Federal Register notice on the petitions for rulemaking from the American Mining Congress (AMC) and the American College of Nuclear Physicians and the Society of Nuclear Medicine (ACNP/SNM). (The issues raised by the petitioners are

among those addressed here and in the final rule on the exemption for nonprofit educational institutions.)[3]

Proposed FY 1994 fees are not included in this paper. These fees will be based on decisions the Commission makes about policy discussed in this paper. The staff recommends that the EDO be permitted to issue the proposed and final rules without further Commission review as was done in FY 1992 and FY 1993.

Major Concerns:

Essentially, OBRA-90 requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the DOE-administered NWF, in a fair and equitable manner. To accomplish this, OBRA-90 provides that the NRC shall continue to collect IOAA fees to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC and shall establish a schedule of annual charges, fairly and equitably allocating the aggregate amount of the charges among licensees. To the maximum extent practicable, the charges shall reasonably reflect the cost of providing services to licensees or classes of licensees.

The NRC has met the first objective of OBRA-90, collecting approximately 100 percent of its budget authority. For FY 1991, the NRC recovered 98 percent of its budget, for FY 1992, 99 percent of its budget and for FY 1993, 98 percent of its budget. Despite this success, many NRC licensees, as well as members of Congress, have expressed concerns about the fairness and equity of the fees.

These major concerns evolve from the inability of the NRC to meet the principle summarized by one commenter; namely, that if the NRC is to be funded through user fees rather than taxes, then

> "each direct beneficiary of NRC's activities -- not merely its 'licensees' -- should contribute to an extent commensurate with the benefits it receives."

This principle cannot be met for two reasons. First, not all

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[3]Both petitioners identified several adverse impacts which they claim have affected their members. AMC, for example, suggests that NRC implement a system (e.g., a licensee review board) giving NRC licensees some control over their fees. They have also suggested that facilities no longer generating revenue be exempted from fees. ACNP/SNM suggest that NRC provide an exemption for medical services similar to that provided for nonprofit educational institutions. They also suggest a sliding scale for fees based on income.

direct beneficiaries of NRC activities pay fees because of legislative constraints and Commission policy. Second, fees are based on the agency's costs to perform its regulatory responsibilities, rather than on the licensee's perception of benefits received. This leads some licensees to conclude that the fees for regulatory activities related to them are not commensurate with the benefits they receive.

Another major concern, not directly related to the issue of fairness and equity, is the efficiency of the fee process. This concern was also addressed in the OIG memorandum to the Commission, dated October 26, 1993. Given the Administration's directive to reduce FTEs and costs in the future, the staff is concerned that unless efficiencies can be achieved through modification of the fee process, methods, and policies, many fee related activities cannot be performed in a timely manner.

The following sections discuss these three major concerns, and possible methods of resolving these concerns. Following the discussion of the three major concerns, other fee concerns and proposed solutions are also evaluated.

Major Concern: Not All Direct Beneficiaries of NRC Activities Pay Fees

The first major concern has been consistently identified by licensees during the past three years. This concern arises because costs for some NRC activities are not assessed to the beneficiaries of the activities because of legislative constraints and Commission policy. Thus, to recover 100 percent of the budget, these costs must necessarily be assessed to licensees that do not directly benefit from those activities. For this reason, the legislative requirement to collect 100 percent of the budget authority through fees inherently places an unfair burden on licensees. As one commenter stated, assessing fees fairly and equitably is difficult:

> "through a system that exempts or excludes certain entities and at the same time must accomplish 100% budget recovery. Given that there are certain regulatory activities whose costs cannot be recovered fairly through user fees, it is clear that 100% recovery is at the root of the user fee allocation problems that the NRC seeks to address through this fee policy review."

Many other comments expressed this same concern. This concern was also noted by the Senate Appropriations Committee, which

recently stated in its report on FY 1994 Appropriations for Energy and Water Development:

> "The Committee believes that the Commission should ensure that these international costs are not collected through domestic licensees." S. Rpt. 103-147, at 188.

Two types of activities are not assessed to the direct beneficiary, but rather to other NRC licensees. They are activities that either (1) cannot be attributed to or associated with an existing NRC licensee or class of licensees or (2) can be attributed to NRC licensees or applicants but are not charged to them owing to statutory constraints or Commission policy decisions.

Under OBRA-90, annual fees can only be charged to licensees. Therefore, costs of activities that cannot be attributed to an existing NRC licensee or class of licensees must be assessed to licensees that do not directly benefit from them. These activities include:

- certain international activities;
- oversight of the Agreement State program.
- generic activities (e.g., research and rulemaking) for classes that do not currently have NRC licenses (i.e, LLW); and

For FY 1993, the fees for the above activities were equivalent to $21.4 million, of which $18.2 million was assessed to power reactor licensees and $3.2 million to other licensees.[4] Specific details on these costs are at Enclosure 3.

The NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the AEA and, therefore, must budget for them. Examples of international activities that are not directly related to NRC applicants and licensees are: statutorily required consultations with Executive Branch agencies on export activities within their jurisdiction; assistance to countries or international organizations that provide little, if any, benefit to NRC's regulatory programs; and support of international safeguards activities related to nuclear non-proliferation.

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[4]In this paper, the dollar amounts used are the amount of the FY 1993 fees that would be assessed for the activities.

The NRC performs activities necessary to oversee and administer the Agreement States program. These activities include reviewing and approving new agreements, performing periodic program reviews to determine their adequacy and compatibility, developing guidance, and providing technical assistance (e.g., inspection assistance) and training to the Agreement States. Because neither the Agreement States nor their licensees are NRC licensees, they cannot be charged annual fees under OBRA-90. The NRC can assess 10 CFR Part 170 fees for specific services (e.g., review of requests for an agreement, periodic reviews of the programs, training and technical assistance) rendered to an Agreement State. However, the NRC has chosen not to do so for policy reasons.

There are no existing LLW disposal facilities licensed by the NRC. Therefore, the NRC generic LLW regulatory activities do not directly support an existing NRC licensee or class of licensees. However, some NRC licensees, as well as some Agreement State licensees, will realize an indirect benefit from these NRC LLW expenditures because they will eventually dispose of LLW at sites that are expected to be licensed in the future.

The second type of activities for which costs are not assessed to the direct beneficiary involves specific NRC costs that can be attributed to either NRC licensees or other organizations but are not assessed to them because of legislative constraints or Commission policy decisions. The following licensees are not assessed certain fees or pay reduced fees:

- most Federal agencies are not assessed Part 170 fees,
- nonprofit educational institutions are not assessed any fees, and
- small entities are assessed reduced annual fees.

For FY 1993 these activities involved fees equivalent to $18.2 million, of which $16.9 million was assessed to power reactors and $1.3 million to other licensees as shown in Enclosure 3.

The first major category of costs covers those activities for which the NRC is unable, on the basis of existing law, to charge a fee to specific applicants or licensees even though they receive an identifiable service from the NRC. These activities include licensing reviews and inspections for Federal agencies (other than the Tennessee Valley Authority (TVA) and the United

States Enrichment Corporation).[5] The IOAA prohibits the NRC from assessing 10 CFR Part 170 fees to Federal agencies for the costs of these activities. These activities include reviews of (DOD) DOE Naval reactor projects; licensing reviews and inspections of Federal nuclear materials users, such as Veterans Administration hospitals, Army irradiators, and NASA radiographers; safety and environmental reviews of the DOE West Valley Demonstration Project; review of DOE actions under the Uranium Mill Tailing Radiation Control Act (UMTRCA); and reviews of advanced reactor designs submitted by DOE. In addition, EPA-92 exempts from Part 171 annual fees certain Federally owned research reactors used primarily for educational training and academic research purposes.

In addition to certain licensees being exempted by law, two groups of licensees are either exempted or pay reduced fees based on prior Commission fee policy decisions. Nonprofit educational institutions are exempted from 10 CFR Part 170 fees and 10 CFR Part 171 annual fees.[6] The Commission has also reduced annual fees for those licensees who can qualify as a small entity. These reduced fees are consistent with the Regulatory Flexibility Act of 1980 requirement that agencies consider the impact of their actions on small entities.

To address the fairness and equity concerns related to licensees paying fees for activities not benefitting them, either: (1) the laws and NRC fee policy must be changed to assess all beneficiaries of NRC activities fees that are commensurate with the cost of those NRC activities; or (2) the requirement to collect 100 percent of the budget by fees must be relaxed. Reactor licensees, who currently pay fees for most of the activities discussed above, have proposed another alternative. They suggest that these costs be distributed among all NRC licensees. Although this would "reduce the unfairness" to reactor licensees, it would shift some "unfair" costs to

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[5]Section 161w. of the Atomic Energy Act of 1954, as amended, authorizes the NRC to impose fees under 10 CFR Part 170 on a Federal agency that applies for or is issued a license for a utilization facility designed to produce electrical or heat energy (e.g., licensing reviews and inspections of TVA's nuclear power plants) or which operates any facility regulated under sections 1701 or 1702 of the Atomic Energy Act (the enrichment facilities of the United States Enrichment Corporation).

[6]On September 29, 1993, the Commission published a proposed rule seeking public comment on a proposal to restore the generic exemption from annual fees for nonprofit educational institutions. This paper assumes that the Commission will adopt this proposal in a final rule.

materials licensees. Given the impact that existing fees are having on materials licensees, the staff does not consider this as a desirable alternative. Further, the conference report accompanying OBRA-90 stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment.

While appearing to be fairer, the staff believes that assessing fees to all the licensees and organizations that do not currently pay fees would create problems in some instances. In particular, the staff believes the Commission should not reverse its policy of reduced fees for small entities. To do so would recreate the concerns about unfair burdens and inequities that the Commission rectified by earlier policy decisions and rulemaking. The policy issue regarding the nonprofit educational exemption is being addressed in a separate paper. Over the past several years, the staff considered various means to recover NRC's costs for international activities which serve broad U.S. national interests, but found no viable fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation.

The Agreement States are the direct beneficiary of NRC oversight and direct technical assistance and some of these costs could legally be recovered under 10 CFR Part 170. However, the staff believes that, absent legislation, assessment of fees to Agreement States for this oversight would create strong opposition similar to that which occurred over the nonprofit educational issue. Agreement States and their representatives commented that Section 274(g) of the AEA requires the NRC to cooperate with the States in the formulation of standards that may well entail regulatory development costs. They indicate that the 29 Agreement States expend over $13 million annually and have over 200 professional staff in their radiation control programs for radioactive materials. This, they say, contributes substantially to the protection of the public health and safety and provides a cadre of qualified personnel for assisting the NRC and other Federal agencies. The Organization of Agreement States indicated that they would be adamantly opposed to charging fees to Agreement States. One Agreement State commented that any attempt to recover generic costs from Agreement States or their licensees would be "cumbersome and ill advised." Another State indicated that if the NRC attempted to assess fees to Agreement State licensees, a number of States would probably return their authority to the NRC, thus defeating the purpose of the Agreement State Program.

Regarding Federal agencies, however, the staff believes that

Federal agencies should pay Part 170 fees for their license reviews and inspections in the same manner as commercial licensees and State or local government agencies. There is no compelling justification for asking the private sector to pay for NRC licensing and inspection of other Federal agencies. Note that Federal agencies already pay annual fees and TVA and the Uranium Enrichment Corporation pay Part 170 licensing and inspection fees.

The staff believes that the current policy and practice of assessing a surcharge to licensees to recover the costs associated with LLW is the right approach. It is not unfair because these costs indirectly support existing classes of licensees. Any LLW site that is licensed would provide facilities for the disposal of LLW from reactors, fuel facilities, and some materials licensees.

To resolve the concerns about some beneficiaries of services not paying fees, commenters also overwhelmingly endorsed legislative change that would reduce the amount of the fees to be collected by the costs of those activities that cannot be attributed to an existing NRC licensee or class of licensees and would assess 10 CFR Part 170 fees to Federal agencies.

In summary, the staff agrees with the commenters and proposes that the Commission minimize the concerns about fairness and equity resulting from some beneficiaries of NRC activities not paying fees by--

- Proposing that OBRA-90 be modified to remove from the fee base costs (about $25 million in FY 1993 fees) for international activities, Agreement State oversight and direct technical assistance, nonprofit educational institutions, and the small entity subsidy.

- Proposing that the AEA be modified to permit the NRC to assess Part 170 fees (about $6 million) to all Federal agencies.[7]

- Continuing to assess fees (about $9 million in FY 1993) to NRC licensees for generic activities for classes (i.e., LLW) that do not currently have licenses.

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[7]Although the legislation would permit recovery of costs for all licensing reviews and inspections performed for Federal agencies, an alternative proposed later in this paper would only require that licensing application review costs be recovered.

The staff notes that these recommendations would reduce the fee revenues available to the Congress and Administration to offset the NRC budget. This could affect the viability of this recommendation. If modification to the existing legislation is not a viable option, then the current approach of assessing these costs to NRC licensees (with the majority going to power reactors) with its inherent problems of fairness and equity should be continued, except that the Commission should then seriously consider seeking legislation that would require assessment of fees to Agreement States.

Major Concern: Fees Not Commensurate With Benefits Received

The second major concern is that some licensees believe that the benefits received are not commensurate with the NRC fees they are assessed. This issue is of most concern to materials licensees, especially with regard to their annual fees. The decreasing number of materials licensees demonstrate their belief that the fees are unfair and inequitable. While the number of licenses remained stable before FY 1991, the number of licenses decreased by about 2,000 (from about 9,100 licenses to about 7,100) during FY 1991, the first year of 100-percent fee recovery. Some licensees consolidated licenses, others turned in unused licenses, and some terminated licensed activities. For FY 1992, the number of materials licenses decreased by about 300 to 6,800 and that number, by about 300 during FY 1993. The overall decrease in the number of materials licenses has resulted in increases in the annual fees to the remaining licensees.

This concern is also reflected in comments that fees comprise a large percentage of the cost of procuring and operating a licensed product. For example, small gauge users have commented that the FY 1993 annual fee of $2,100 equals about half the purchase price of a new gauge. Others have indicated that the NRC budget, and therefore fees, are higher than what they believe is necessary. Therefore, commenters suggested that the Commission must, as its licensees have already done in their increasingly competitive markets, build cost-effectiveness into its regulatory strategy.

On the basis of NRC's three years of experience administering the annual fees for the materials program and the comments received on the fee policy notice, the staff concludes that materials licensees perceive their annual fees to be inequitable and unfair for the following three reasons:

(1) The NRC materials regulatory program is necessary for NRC licensees and supports both NRC and Agreement State licensees. However, only NRC licensees pay the annual fees.

(2) From the licensees' perspective, the NRC has assessed large increases in fees without added value, and

(3) Licensees measure the value of the license in economic terms, not NRC regulatory costs.

There is truth to the claim that the fees are not commensurate with benefits because the NRC material regulatory program supports both NRC and Agreement State licensees, yet only NRC licensees pay fees to recover the cost of these activities. The NRC performs generic regulatory activities for nuclear materials users and uranium recovery licensees. These activities include conducting research, developing regulations and guidance, and evaluating operational events. These generic activities provide the basis for the NRC to regulate its approximately 7,000 materials and uranium recovery licensees. Because many Agreement States adopt NRC regulations, these NRC activities also provide the regulatory basis for the 29 Agreement States to regulate their 16,000 materials licensees. Under OBRA-90, the NRC cannot charge an Agreement State or its licensees an annual fee because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 23,000) of all licensees can be assessed annual charges to recover the cost of generic activities supporting both NRC and Agreement State licensees. As a result, part of the costs (about $15 million in FY 1993 fees) for these generic regulatory activities that are included in the annual fees for NRC materials and uranium recovery licensees could be considered an unfair burden on NRC licensees.

NRC licensees also believe that NRC fees place them at an unfair competitive advantage with licensees in Agreement States. For example, one commenter stated that the fee legislation:

> "creates a market place in which approximately 17,000 competitors have an unfair advantage when it comes to competing in the national market place. It is unfair to require certain NRC licensees to carry the burden for activities conducted for government agencies, foreign governments, treaty commitments, or other NRC licensees who, because of special status, are not supporting their share of the NRC's costs. It is also unfair to place these NRC licensees at a financial disadvantage with their Agreement State competitors simply because they are doing business in a Non-Agreement State."

The staff believes that licensees' perception of unfairness as it relates to activities that support both NRC and Agreement State licensees will continue and grow worse as more states become Agreement States. The potential exists for additional Agreement States to be approved by NRC in the near future. Both Pennsylvania and Massachusetts have filed letters of intent with the NRC and Oklahoma and Ohio are seriously considering agreements. This would shrink the existing materials license fee base further and result in higher annual fees for the remaining NRC materials licensees. If these four states were to become Agreement States, the NRC would lose approximately 2,000 licenses and the annual fee for the remaining 4,500 - 5,000 materials licensees would increase by about 30 percent.

To alleviate this concern, either (1) some of the costs under discussion should be assessed to Agreement States or (2) the requirement to recover 100 percent of the budget should be relaxed.

Significant problems with assessing fees to Agreement States were previously discussed. The materials licensees and Agreement States present valid arguments for not paying fees for the costs involved in this issue. The staff believes the best means to address the issue is to exclude certain of these regulatory costs from the fee base.

With respect to reason (2), that licensees view the increases in annual fees during the past three years as unfair because they received no additional benefits, the staff reviewed the changes in annual fees for various categories of materials licenses, which are given in the following table.

Categories of Materials Licenses	Annual Fees			
	FY 1990 and Before	FY 1991	FY 1992	FY 1993
Broad Scope Manufacturing	0	$7,800	$11,150	$18,420
Large Irradiators	0	10,800	16,550	22,020
Broad Scope R&D	0	6,300	9,150	14,320
Well Loggers	0	7,000	10,450	11,420
Broad Scope Medical	0	9,900	13,950	28,020
Other Medical	0	3,500	4,750	5,220
Small Gauge Users	0	1,500	2,250	2,120

In FY 1991, materials licensees were assessed annual fees for the first time. Although the NRC explained that the annual fee was a new requirement, not an increase in existing Part 170 licensing and inspection fees, many licensees believed that they were paying more than they had in the past with no value being added. The annual fee increased in FY 1992 because of both an increase in the NRC's budget and about a 25 percent reduction in the number of material licensees available to pay the discretionary fixed costs recovered by annual fees. Again, from the licensees' perspective, fees had increased with no commensurate increase in benefit or value. One commenter stated that "the increasing fees draw attention to whether they reflect the value of the services being provided to regulated entities." Annual fees also increased substantially for some materials licensees in FY 1993. The reasons for these increases were the same as in FY 1992, plus the addition of large increases in inspection fees that are used as a basis to calculate annual fees for materials licensees. The inspection fees increased as a result of the CFO Act requirement to review fees biennially. These increases in inspection fees appropriately shifted the amount of the annual fee among the various material licensees, resulting in relatively large increases for the more complex licenses, such as broad scope medical and research and development licenses and minor increases for the small and less complex material users.

Some commenters expressed a concern that the NRC budget is out of control and that fees will continue their upward spiral in the future. They contend that because the NRC is required to collect 100 percent of its budget authority and licensees are paying for the entire budget, a mechanism should be created, either through

the establishment of a separate office or an advisory committee, to (1) assess the cost-effectiveness of proposed generic programs and to eliminate potential duplication of industry-sponsored programs; (2) review agency cost trends and accounting practices; and (3) develop and propose future revisions to the fee regulations. They also suggested that the NRC freeze fees at FY 1991 levels or limit the increases to some multiple of inflation.

The staff believes that the primary causes of the previous large, across-the-board annual fee increases are less likely to occur in the future. License terminations in the past two years have been minimal. Large increases in Part 170 fees used to calculate the annual fee should not occur because the fees will be reviewed every two years in response to the CFO Act. In addition, Administration efforts to streamline government are expected to result in smaller budget increases. The use of cost-center concepts should also improve the tracing of costs to the diverse classes of material licensees. The annual fee is not new and most licensees now understand its purpose.

However, a large fee increase could occur for a specific category of licenses because a relatively small increase in the budget could result in a large percentage increase in annual fees. For example, a $2-million medical study, which would be unique to medical licensees, would increase the base annual fee for each of the medical licensees by about $1,000 (from $5,100 to $6,100), a 20-percent increase for most of the hospitals and physicians. If the $2-million study were budgeted for small gauge licensees, the small gauge base annual fee would increase by about $700 (from $2,000 to $2,700), a 35-percent increase. The use of cost-center concepts, however, will provide a means to explain the specific increases.

Also the annual fees, as noted above, could go up if new Agreement States are added, reducing the number of NRC licensees unless the fee base is adjusted accordingly.

With respect to reason (3), the fact that licensees measure fees in terms of the economic value of the license as opposed to NRC regulatory costs, licensees continuously request that fees be based on the amount of material possessed, the frequency of use and sales generated from using the licensed material, the number of hospital beds, the size of the facilities, market competitive positions, or other indicators of the economic value to the licensee.

This issue has been addressed by the NRC in the Regulatory Flexibility Analysis presented in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). Based on that analysis, the Commission did not adopt the approach recommended by licensees because it would require licensees to submit large amounts of new data and would require additional NRC staff to

evaluate the data submitted and to develop and administer even more complex fee schedules. The staff continues to believe that uniformly allocating generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair, equitable, and practical way to recover its costs. The staff believes that establishing annual fees (or "price") based on indicators of the economic value of a license is not practical, would lead to even more concern regarding the equity and fairness of NRC fees, and result in increased fee administration costs.

In summary, to minimize the concerns that fees paid are not commensurate with benefits received, the staff believes that two actions are necessary. First, the material licensees should not be required to pay for all of the regulatory costs that support both NRC and Agreement States. This could be accomplished through legislation to relax the 100-percent fee recovery requirement or through legislation that would allow the NRC to charge Agreement States an annual charge that they could pass along to Agreement State licensees. The staff recommends against this latter option for the reasons discussed relating to charging Agreement States for NRC oversight by the Office of State Programs. The NRC could also include these costs as agency overhead in calculating the hourly rate. This would reduce the fees or materials licensees and shift most of these costs to power reactors. This would be considered unfair by the power reactors since it would be viewed as adding costs for additional activities that do not benefit them.

The second action necessary is to minimize large, across-the-board increases in fees and to improve the explanation of specific increases for specific regulatory needs. To accomplish this, the NRC fee policies and methods need to be stabilized. Although the staff believes future large across-the-board increases in fees are unlikely, large increases could occur for specific subclasses of licensees if NRC makes large budget increases for safety reasons. Implementation of cost-center concepts will provide better tracing of the costs to the specific subclass of licensees and will provide additional information to help explain the increases.

Another option considered by the staff and strongly supported by those who commented is to place a cap on the amount of fee increases in any given year. For example, the increase could be limited to a multiple of the Consumer Price Index (CPI). The staff does not support this alternative because it may be perceived by some as indicating that the NRC budget should be limited to the same increases instead of being determined on the basis of resources needed to carry out the agency mission.

In summary, to minimize the concern over the fees not being commensurate with benefits received, the staff recommends the

following actions:

1. No longer require material licensees to pay for all NRC generic regulatory costs that support both NRC and Agreement State licensees. Towards this end, the staff recommends that OBRA-90 be modified to exclude a portion of the generic costs for materials licenses from the fee base.

2. Utilize cost-center concepts to provide better data on which to base and explain fees, including specific changes.

Major Concern: Streamline Fee Effort

During the past three years of implementing OBRA-90 to collect 100 percent of the NRC's annual budget authority, the staff has evaluated over 1,000 public comments on fee-related rules; and responded to several hundred requests for exemptions, dozens of letters from Congress, and thousands of telephone calls from licensees concerning the assessment of annual fees and overdue bills. As a result, the workload necessary to implement the fee program has been extremely burdensome on the available staff. Even with the use of contractor assistance, the staff has struggled to meet the existing workload. As a result, the staff specifically requested comments on how to reduce the NRC efforts necessary to implement the 100 percent fee recovery legislation.

The OIG in its October 26, 1993 review of fees for licensees also alluded to this question and concluded that:

> "The agency's license fee development process is very detailed and labor intensive. It has been shaped over the years by the implementation of new Federal regulations and court decisions. Substantial effort is expended in attempting to make the process equitable and the costs reasonable".

The OIG report went on to note that:

> "NRC could significantly reduce time and effort, and related resources devoted to license fee development by adopting a fee schedule similar to that used by FERC. The Part 170 fees could be eliminated completely or, at least, to the maximum extent practicable. Secondly, the determination of the Part 171 fees could be simplified by eliminating/streamlining much of the detailed analyses performed as part of the process."

The staff believes that in addition to efficiency, other benefits would accrue from a simpler fee process and policy. Although not likely to result in more fairness and equity, a simpler fee

structure would make it easier for licensees to understand NRC fees and would lower NRC's budgeted costs and resulting fees.

Given the comments received as well as the problems encountered in implementing OBRA-90, the staff has considered several ways to reduce the staff workload.

One option is to eliminate the requirement to promulgate the fees by notice and comment rulemaking. On the one hand, the staff would prefer to use notice and comment rulemaking only when fee legislation, fee policy, or fee methodology changes. The staff sees limited value added to establishing fees through notice and comment when the underlying bases for the fees have not changed. Further, the budget on which the fees are based has already been decided by OMB and Congress by the time the fees are promulgated. On the other hand, those who commented on the EPA-92 notice strongly prefer that the NRC continue to use notice and comment rulemaking to promulgate fees. Their primary reason for wanting to continue the notice and comment rulemaking process is that they consider this the only opportunity to express their position on the NRC budget and associated fees that they must pay. For example, some stated that the courts have long recognized that Congress enacted the notice-and-comment rulemaking procedures of the Administrative Procedures Act to "give the public an opportunity to participate in the rulemaking process" and to enable "the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact to those regulated." Others expressed the view that publication of a fee rule in final form without comment ignores the significant monetary changes in fees that have been assessed licensees in the previous year even if the methodology or policies do not change. To publish the fee schedules in final form "would deny an adversely affected licensee an opportunity to voice its objection." One licensee stated "a lack of oversight currently exists regarding NRC policy" and that providing for public comment on the basic fee methodology and policies gives the public and the regulated community a rightful voice in the development of those policies.

As indicated by the comments, most licensees feel strongly that although the policies and procedures related to fee assessment might be the same as before, this should not be used to foreclose the opportunity for new commentary or renewed dissent. Given these strong views, the staff proposes that the Commission retain notice and comment rulemaking of fee schedules at this time. This issue should be revisited if the fees become less controversial in the future.

Another option considered by the staff to streamline the fee calculations was reducing the complexity of the fee calculation by reducing the number of subclasses of fees for some major classes of licensees. For example, seven subclasses of power

reactors paid annual fees in FY 1993 that vary by only three percent (from $2,935,000 to $3,031,000). This difference is relatively small and could be considered de minimus and therefore not commensurate with the effort necessary to reach an apparent level of precision. Those who commented on the fee policy notice, however, disagree with this suggested policy change. They indicated that OBRA-90 guidance requires that those entities who require the greatest expenditures of the NRC's resources pay the greatest annual fee; therefore, the existing policy of assessing each reactor design a charge that reflects the varying amounts of NRC resources spent on generic research and other regulatory activities unique to that design should be retained. They believe the difference in reactor fees of $96,000 between the highest and lowest annual fee is significant enough to warrant the effort to calculate the fees using the existing method.

Fuel facility licensees also stated that with respect to a uniform annual fee for all fuel facility licensees, such a "simplification" would ignore the significant differences between the various steps in the low-enriched fuel fabrication process and the differences between low- and high-enriched fuel as well as the differences in the NRC's budgeted safety and safeguards costs allocated to each class. Commenters indicated that, for example, the two high-enriched uranium fuel manufacturers require much greater safety and safeguards oversight by the NRC because they possess strategic quantities of nuclear materials. According to these commenters, if a uniform fee were assessed, low-enriched uranium manufacturers and uranium hexafluoride converters would be subsidizing the regulation of high-enriched uranium fuel manufacturers while receiving no tangible benefit. This suggested policy change, they indicate, contradicts OBRA-90's mandate that fees be fairly and equitably allocated among licensees. Again, the staff defers to the commenters' position but will continue to look toward ways of reducing the number of subclasses if the differences in the annual fee to be assessed is a small amount.

Another option for streamlining the fee process is to assess only an annual fee, along the lines suggested by the OIG in its October 1993 review of fees. This option will require modifying OBRA-90 to eliminate the requirement for NRC to assess Part 170 licensing and inspection fees. If this option is adopted, the Office of the Controller, the program offices, and the Regions could avoid spending on the order of 10 FTEs and about $200,000 in contractual support used to collect Part 170 fees.

Under this option, the staff would include the NRC costs for inspections and licensing amendments, including materials license renewals, in a single increased annual fee. Thus, there would no longer be Part 170 amendment or renewal or inspection fees assessed for specific services to specific licensees. A review

fee would continue to be assessed for review of applications for initial licenses, such as standard design certifications, renewal of power reactor licenses, new material licenses, etc., since these applicants would not pay an annual fee.

The primary benefits from this approach are the NRC resource savings and an overall simpler fee structure. This fee structure, however, will likely be perceived by some licensees as less fair than the current one, which assesses fees for services rendered to each licensee, because of differences in the amount of fees for inspections and amendments that licensees in the same class currently pay. For example, the inspection hours and fees for different reactors may vary. Also, some materials licensees may be inspected more frequently than others. Allied Signal, in the most recent fee case,[8] argued that Sequoyah Fuels, another fuel facility in its license class, was a problem facility that causes NRC to incur considerably more facility-specific costs.

The staff understands the concerns associated with eliminating the Part 170 fees. However, on balance, the staff believes that roughly 10 FTE and $200,000 in resource savings resulting from streamlining the NRC fee process to charge only an annual fee outweighs the potential unfairness that some licensees are likely to voice. The staff also believes the concerns can be mitigated. First, although fees assessed on a yearly basis may vary, the differences in the average cost over longer periods of time should be reduced. The staff can also adjust the subclasses of licensees to minimize these differences. Second, as stated in the previous paragraph, staff would continue to charge fees for new license applications because applicants for a new license would not pay an annual fee until the license is issued. Also, licensees (e.g., decommissioning and possession only (POL) licenses) that currently do not pay an annual fee but pay Part 170 fees would have to pay an annual fee, if Part 170 fees are eliminated.

The option that would result in the most resource savings (about 20 FTE) is to modify OBRA-90 to allow NRC to assess 100 percent of the budget to operating power reactors and major fuel cycle licensees only.[9] This option, the staff believes, would be considered as totally unfair by the power reactors and major fuel facilities, because they would be paying fees for materials regulatory activities. However, it would eliminate all of the materials licensees' concerns, including the letters and phone

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[8] Allied-Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

[9] If this option is pursued, previous legislative options to improve fairness and equity, such as deleting certain costs from the fee base, should not be pursued.

calls about annual fees. Although this approach would result in significant resource savings, the staff does not believe it would be prudent to pursue this option because of the major concern related to fairness that it raises. It would, from the power reactor perspective be more unfair than the current fee structure. It may also be considered inconsistent with the EPA-92 request that the NRC recommend changes in existing law to prevent placing an unfair burden on NRC licensees.

In summary, the staff believes that the most appropriate way to reduce the administrative burden on staff, while retaining a reasonable degree of fairness and equity in the fee schedules, is to modify OBRA-90 so that the NRC can charge only an annual fee. However, the staff will continue to look for opportunities to reduce the number of subclasses for annual fees. With regard to publishing the fees without notice and comment, the staff will revisit this concept in the future if the controversy over fees subsides.

Other Concerns:

Several other specific concerns have been raised about the fairness and equity of fees.

A. Proration of Annual Fees for Terminated Licenses

Currently the full annual fee is assessed to all licensees which have not filed a termination or POL request by the beginning of the fiscal year. One commenter suggested that to be more fair and equitable the NRC should provide in its regulation a provision for prorating of the annual fee for the fiscal year in which a licensee requests an amendment to remove the license authority. During the past three years, many materials licensees have written the NRC requesting an exemption from the fees or an extension of time (beyond October 1) to terminate the license and be relieved of the annual fee because (1) no material was ever possessed under the license; (2) the licensed material was never or infrequently used; (3) the material was in storage; or (4) they have attempted to sell the device without success.

The staff acknowledges this concern and plans to include a proration provision for termination as well as issuance of new licenses in the FY 1994 proposed rule.

B. Annual Fees for Possession Only, Decommissioning and Reclamation Licensees

Some reactors, major fuel facilities, and uranium recovery facilities are inoperative but continue to benefit from NRC regulatory activities, primarily those activities related to decommissioning or site reclamation. For example, some power reactor licensees have received a POL from NRC and are in the

process of decommissioning their facilities. In addition, many uranium recovery licensees (mills) are no longer operating and have filed reclamation plans for approval by the NRC. These licensees benefit from the research, rulemaking, and issue resolution that the NRC performs for decommissioning or reclamation. Licensees believe, however, that having non-operating facilities pay annual fees is unfair because they no longer generate revenue and require very little NRC supervision. Some cannot complete decommissioning for lack of a place to dispose of waste. Therefore, they conclude that they must retain a non-operating license, through no fault of their own. Another concern is that in the uranium recovery area only a few active licenses will remain in the near future to pay for generic activities, including those related to reclamation.

The staff recommends that the Commission continue the present policy of assessing annual fees to licensees until the license is amended to authorize possession only or decommissioning. This would be consistent with policy decisions that those who benefit from a license that authorizes operation or use of material pay annual fees.

C. **Fees For Small Entities**

Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $250,000 to $3.5 million, pay a maximum annual fee of $1,800. A second or lower-two small entity fee of $400 was established for small entities with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

Commenters have indicated that more variation in the fees assessed to small entities should be provided. For example, one commenter indicated that NRC should "create more fee categories based on gross annual receipts." Some commenters argued that reducing the gap between the minimum small entity fee of $400 and the maximum fee of $1,800 would eliminate some of the competitive disadvantage experienced by those who are slightly above the established NRC thresholds.

As indicated earlier in this paper, the merits of whether the NRC small entity size standards should be changed is being reevaluated and would be separately presented to the Commission for review and decision. The staff recommends that the issue raised by commenters be deferred until the Commission has made a decision on whether or not to revise the current small entity size standards, since a change in the size standards could cause the NRC to change its small entity fees.

D. **Defer license review fees for advanced reactors.**

The Commission changed its policy of deferring the costs for standardized reactor design reviews in the final FY 1991 rule implementing 100-percent recovery. The Commission decided that for fairness and equity reasons, the cost of these reviews, whether for domestic or foreign applicants, should be assessed under Part 170 to those filing an application with the NRC for approval or certification of a standardized design. The Senate Energy and Water Committee recently noted that:

> "The Committee is also concerned that the NRC review fees charged to the ALWR design certification applicants are becoming overly burdensome. The recent schedule delay will exacerbate the problem. The Commission should reconsider its policy for allowing payment of those fees to be deferred until the certification is actually employed." S. Rpt. 103-147 at 188.

The staff believes that for the same reasons of fairness and equity that led to the reversal of the decision in FY 1991, the review fees should continue to be assessed to advanced reactor applicants. There is no compelling justification for singling these classes of applications for special treatment and shifting additional costs to power reactors.

E. **Place a cap or ceiling on topical report fees.**

The issue of the establishment of a ceiling on Part 170 licensing fees for the reviews of topical reports was raised by an owners group commenting on the notice. The group stated that some activities that require NRC review and approval are voluntarily originated by them in order to improve plant safety and performance. The reinstatement of a fee ceiling for topical reports will encourage the continuation of this practice to assure plant safety benefits. The group said that knowing in advance the limit on the cost of the reviews would enable them to more effectively and efficiently plan the allocation of their limited resources.

Another issue that has recently been raised concerns the assessment of Part 170 fees for review and approval of topical reports. That is, whether the submittal of the reports by utilities and owners groups should be viewed as "generic," in the broadest sense and the costs recovered through annual fees instead of Part 170 fees. This might encourage the submittal of additional reports in the interest of efficient and effective agency operations, which would be cost beneficial to both the NRC and the industry.

The Commission decided in the final FY 1991 fee rule to eliminate the ceiling for topical report reviews based on the 100-percent recovery principle and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. NRC costs for topical report reviews vary significantly, depending on the particular topical report reviewed, and therefore make it impractical to establish a fair and equitable ceiling or flat fee.

The staff believes the NRC should continue the present policy of assessing Part 170 fees, without a ceiling, for the review and approval of topical reports. Inherent in the initial decision to assess Part 170 fees, was the fact that the reports were being voluntarily submitted for review and approval and there was no compelling reason not to charge for the review and approval cost. Although a topical report can be used by more than one licensee, this use typically benefits the organization that submits the topical report. The staff is examining whether it is practical and cost effective to bill the members of a certain organization instead of the organization itself.

F. Expand Scope of Part 170.

Presented in the notice was the question of whether to broaden Part 170 to recover costs incurred for specific activities that are now collected as part of the annual fee, including Independent Investigation Teams (IITs), allegations, contested hearings, vendor inspections, orders and amendments resulting from orders, and reviews that do not result in approvals.[10]

A majority of the commenters indicated that if Part 170 were expanded, they would support billing for orders and amendments resulting from such orders. These actions, the comments stated, although not licensee-initiated are provided to a specific licensee and should be assessed on an individual basis. One commenter argued that NRC should correct the situation in which a licensee who does not submit an amendment request recommended by an NRC generic letter until ordered to do so is not charged a fee, but a licensee who voluntarily submits such an amendment is subject to Part 170 fees.

With respect to the remainder of the items, most commenters believed that many activities listed in the notice do not constitute a specific service to an identifiable licensee and that the costs should continue to be collected under Part 171. For example, commenters claim that the cost of allegations and

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[10]This issue becomes moot if the Commission requests and the Congress enacts legislation that removes the requirement to assess Part 170 fees.

contested hearings are beyond the licensee's control and should not be billed on an individual basis. Instead, the NRC should continue to include costs for these activities in the Part 171 annual fee. Other comments indicated that investigations of allegations and contested hearings often raise generic issues of concern to all licensees. Therefore, saddling individual licensees with these additional costs is unfair and inequitable because they arise at NRC's direction, are not requested by a licensee and are beyond a licensee's control. Others commented that all licensees benefit from these regulatory activities and that the costs should be recovered through the annual charge.

The staff agrees with these comments and the staff plans to continue to include the costs of IITs, vendor inspections, contested hearings, allegations, and reviews that do not result in approvals, and so forth, in the annual fee. The staff also recommends that we not charge for orders and amendments resulting from orders because most orders are used to impose civil penalties. Thus, charging for orders could be perceived as additional fines to the licensee. In some cases (e.g. requests for hearing as a result of an order), charging for orders could be perceived as penalizing a licensee for exercising its right to disagree with NRC.

RECOMMENDATIONS:

For the reasons discussed in this paper, the staff concludes that modification of existing fee legislation is necessary to minimize the major concerns about fairness, equity, and administrative burden of fees. To this end, the staff recommends the following legislative changes:

1. Modify OBRA-90 to remove from the fee base costs for international activities, Agreement State oversight, the exempted fees for nonprofit educational institutions, and the amount of the fee reduction for small entities. This would minimize the major concern associated with NRC licensees paying for activities that do not benefit them. (This would reduce the amount to be collected by about $25 million or about 5 percent of the FY 1993 budget recovered through fees.)

2. Modify OBRA-90 to eliminate from the fee base a portion of the cost of generic regulatory activities that supports NRC and Agreement States material licensees. This would eliminate the concern that NRC material licensees fees, which supports the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received. (This would reduce the amount to be collected by about $15 million or about 3 percent of the FY 1993 budget recovered through fees.)

3. Modify the AEA to permit NRC to assess application and other fees (about $6 million) for specific services to all Federal agencies, so that other NRC licensees do not have to pay for the cost of these services that do not benefit them.[11]

4. Modify OBRA-90 to eliminate the requirement that NRC assess Part 170 fees so as to reduce the resources required to assess and collect fees. (If this option is adopted, the NRC could avoid spending about 10 FTEs and about $200,000 for fees.)

If legislation to relax the 100-percent recovery requirement is not viable, the staff recommends that the current policies be continued, except the Commission should seriously consider requesting legislation that would require the assessment of fees to Agreement States so as to improve the fairness and equity of the fees for NRC materials licensees. This is especially appropriate, given the likelihood of more States becoming Agreement States.

The Commission should note that:

a. The staff plans to continue current fee policies, except that it will prorate the annual fee.

b. The staff plans to develop Notices of Proposed and Final Rulemakings for FY 1994 based on Commission decisions and guidance on this paper. The FY 1994 rule cannot reflect any proposed legislative changes because they will not be enacted in time.

c. The staff will convert this paper, based on Commission decisions and guidance, to a report that will be sent to the Congress and to the Office of Management and Budget.

d. The staff does not plan to include draft legislation with the report to Congress.

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[11]This change would still be necessary if the requirement to assess Part 170 fees is eliminated, since the staff would want to assess an application fee to those agencies applying for new licensees who would not pay annual fees.

COORDINATION:

The Office of the General Counsel has reviewed and has no legal objection to the recommendations of this paper.

James M. Taylor
Executive Director
for Operations

Enclosures:
1. April 19, 1993, Federal Register Notice
2. List of Public Comments
3. Fees Related to Fairness and Equity Concerns

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, January 4, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, December 28, 1993, with an information copy to the Office of the Secretary. 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.

This paper is tentatively scheduled for discussion at an Open Meeting on Tuesday, December 21, 1993.

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10 CFR Parts 170 and 171

RIN 3150-AE54

NRC Fee Policy; Request for Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is soliciting public comment on the need for changes to its fee policy and associated legislation. This action responds to recent legislation that requires NRC to review its policy for assessment of annual fees, solicit public comment on the need for changes to this policy, and recommend to the Congress the changes in existing law the NRC finds are needed to prevent the placement of an unfair burden on NRC licensees. The NRC is presenting various options, alternatives, and questions for consideration and comment concerning potential legislative changes as well as potential policy changes that would require amendments to NRC's fee regulations. The NRC is also announcing the receipt of and requesting comment on a petition for rulemaking submitted by the American Mining Congress (PRM-170-4) that requests that NRC conduct a rulemaking to evaluate its fee policy.

DATES: The comment period expires July 19, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Given the relatively long comment period, requests for extensions of the comment period will not be viewed with favor.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-504-1678).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF) for FYs 1991 through 1995 by assessing fees. The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are generally for the review of applications for and the issuance of new licenses or approvals, amendments to licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal Register which established the 10 CFR part 170 professional hourly rate and the materials licensing and inspection fees, as well as the 10 CFR part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR part 170 hourly rate and fees, and the 10 CFR part 171 annual fees. Portions of the 1991 rule were recently remanded to the Commission for reconsideration as a result of the Court's decision in *Allied-Signal* v. *NRC*, (D.C. Cir. March 16, 1993). A separate Federal Register notice addressing the remand issues will be published in April, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those licensee fees that were previously billed every six months. The limited change to 10 CFR part 171 adjusted the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a

small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small businesses and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), the NRC published a final rule in the Federal Register that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992. The basic methodology used in the FY 1992 rule was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472).

Purpose

On October 24, 1992, the Energy Policy Act was enacted. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and academic research purposes. The Act also exempted from fees certain Federally owned research reactors used primarily for educational purposes. On February 4, 1993, the NRC received a petition for rulemaking submitted by the American Mining Congress (AMC). The petition was docketed as PRM-170-4 on February 12, 1993. The petitioner requested that the NRC amend 10 CFR parts 170 and 171 concerning fees for facilities, materials licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended. The petitioner requested this action to mitigate alleged inequities and problems with the present fee system. Because the issues raised by the petitioner concern the same subjects as the fee policy review required by the Energy Policy Act, the NRC is announcing receipt of the petition and requesting public comment on the issues raised in PRM-170-4 in this document.

The purpose of this notice is to solicit public comment on the need, if any, for changes to the existing NRC fee policy and associated laws in order to comply with section 2903(c) of the Energy Policy Act and to respond to the AMC petition.

In the legislative area, the NRC encourages commenters not to address the public policy issue of whether the Federal government should fund its activities through user fees rather than assessing taxes on the general population. Instead, the NRC asks that commenters focus on this central question: "Given that user fees will be assessed to NRC licensees, what specific legislative or NRC policy changes are needed to eliminate any unfair burden?"

With respect to suggested amendments to the fee policies set forth in 10 CFR parts 170 and 171, comments that request a fee reduction for one licensee or a class of licensees should explicitly indicate who should be assessed the budgeted costs for the proposed fee reductions in order to recover 100 percent of the NRC budget authority. It should be noted that any changes to the existing 10 CFR parts 170 and 171 would require notice and public comment before the changes are made.

The NRC has had two years of experience in implementing the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget authority. During that time, the NRC has evaluated over 500 public comments on fee related rules; responded to several hundred requests for exemptions, letters from licensees, and letters from the Congress; and responded to thousands of telephone calls from licensees concerning the assessment of annual fees. Many of these comments and letters expressed concern about the burden of fees.

Based on previous public comments and letters, the NRC has developed potential options and alternatives for change as well as questions for further consideration and comment by the public. While comments may be made on any and all aspects of the NRC fee policy and the existing laws upon which the fees are based, it would be particularly helpful to the NRC if the comments addressed the specific items identified in this document. This would facilitate the process of analyzing and evaluating the comments in an efficient and timely manner. This would also enable the NRC to provide the Congress with specific recommendations concerning any legislative changes to OBRA-90, and the Atomic Energy Act.

Although the Energy Policy Act requires only comments on the annual fees assessed by the NRC under section 6101(c) of OBRA-90 and 10 CFR part 171, the NRC is also seeking comments on whether or not to broaden the scope of 10 CFR part 170 to recover some costs that are currently recovered as annual fees under 10 CFR part 171. These costs are associated with specific NRC actions for specific applicants, licensees, or other organizations.

Four Major Areas of Concern Identified By NRC

To assist in focusing comment, the NRC has identified four broad areas where previous public comment or concern indicated that the fees may place an unfair burden on licensees. The areas include (1) the surcharge assessed to certain licensees under 10 CFR part 171 and the generic regulatory costs that support the Agreement States; (2) fluctuating annual fees; (3) simplifying the development of annual fees; and (4) the recovery of some costs for specific identifiable services through annual fees.

I. Annual Fee Surcharge and Regulatory Support of Agreement States

Both the Congress and the NRC have recognized that the NRC budget includes costs for required NRC activities but for which the costs cannot be attributed to existing NRC licensees. According to the Conference Report accompanying OBRA-90, "increasing the amount of recovery to 100 percent of the NRC's budget authority will result in the imposition of fees upon certain licensees for costs that cannot be attributed to those licensees or classes of licensees." The Conference Report further stated that: "The conferees intend the NRC to fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees." Therefore, to implement 100 percent fee recovery, the NRC must impose the cost of some activities on licensees who neither requested nor derive direct benefit from those activities. In addition, the Commission has made certain policy decisions that result in charging fees to licensees for activities that do not provide regulatory support to those licensees. Under OBRA-90, the costs of those activities can only be recovered by assessing annual fees to existing NRC licensees. To recover these types of costs, the NRC assesses a surcharge to certain licensees.

Activities Included In The Current Surcharge

The following discussion presents the three broad categories of activities that are included in the current annual fee surcharge:

1. *Activities not associated with an existing NRC licensee or class of*

licensees. The first major category of costs covers those NRC activities that cannot be attributed to an existing NRC licensee or class of licensees. This category includes international, Agreement State, generic low-level waste (LLW), and generic uranium enrichment activities.

Some international activities are not directly tied to an individual licensee or class of licensees. These activities include some safety assistance provided to foreign countries and some non-proliferation reviews.

In addition, the NRC's budgeted costs for administering the Agreement State program are attributed only to Agreement State licensees. Only Agreement State licensees benefit from this program. Because Agreement State licensees are not NRC licensees, they cannot be charged an annual fee under OBRA-90.

The three existing LLW disposal facilities are licensed by Agreement States. Two of these facilities also have NRC licenses for disposal of special nuclear material. Therefore, the NRC generic LLW regulatory activities do not fully support an existing NRC licensee or class of licensees. However, some NRC licensees, as well as Agreement State licensees, will indirectly receive the benefits from these NRC LLW expenditures because they will dispose of LLW at sites that are expected to be licensed in the future.

Another area where NRC is establishing the regulatory framework to regulate future licensees is uranium enrichment. Although an application has been filed for an enrichment facility, the license has not been issued and, therefore, there is no uranium enrichment licensee that may be assessed an annual fee for these generic activities. Under OBRA-90, annual fees can only be charged to licensees, not to license applicants.

For FY 1992, approximately $14 million was included in the power reactor surcharge for this category; approximately $4 million was assessed as a surcharge to classes of nonreactor licensees that generate low level waste; and $3 million for administering the Agreement State program was included in the NRC professional hourly rate and assessed to all licensees.

2. *Specific applicants and licensees or classes of licensees that are not subject to fee assessment under IOAA or other law.* The second major category of costs covers those activities for which the NRC is unable, on the basis of existing law, to charge a fee to specific applicants or licensees even though they receive an identifiable service from the NRC. These activities involve licensing reviews and inspections for Federal agencies other than the Tennessee Valley Authority (TVA) and the United States Enrichment Corporation.[1] In addition, the Energy Policy Act exempted from annual fees certain Federally owned research reactors used primarily for educational training and academic research purposes.

With regard to Federal agencies, the NRC performs licensing and inspection activities, and conducts other reviews for which fees, except for IOAA prohibitions, would normally be charged under 10 CFR part 170. For example, the NRC reviews DOD/DOE Naval reactor projects; issues licenses to and conducts inspections of Federal nuclear materials users, for example, Veterans Administration hospitals, Army irradiators, and NASA radiographers; and performs safety and environmental reviews of DOE West Valley and uranium mill tailings actions as required by the West Valley Demonstration Project Act and the Uranium Mill Tailing Radiation Control Act (UMTRCA), respectively. The NRC also reviews advanced reactor designs submitted by DOE.

The IOAA prohibits the NRC from assessing 10 CFR part 170 fees to Federal agencies for the costs of these activities. The Energy Policy Act prohibits the assessment of 10 CFR part 171 annual fees to certain Federally owned research reactors used primarily for educational purposes. Therefore, under OBRA-90, the NRC must assess annual fees to other licensees to recover the costs of these activities in order to comply with the 100 percent recovery requirement.

For FY 1992, approximately $4 million was included in the surcharge for operating power reactors for this category of NRC activities.

3. *Activities relating to applicants and licensees currently exempt from 10 CFR parts 170 and 171 fees or assessed reduced annual fees for small entities based on current Commission policy.* The third major category of costs covers those activities for which specific applicants or licensees receive NRC services and could be assessed fees. However, as a result of existing Commission fee exemption and fee reduction policy decisions, certain licensees are exempt from fees or pay reduced annual fees.

Nonprofit educational institutions, for example, certain nonpower reactor and nuclear material users, are exempted from 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The Commission has also reduced the annual fees for those licensees who can qualify as a small entity under the Commission's regulations. This action is consistent with the requirements of the Regulatory Flexibility Act of 1980 that agencies consider the impact of their actions on small entities.

For FY 1992, approximately $7 million in NRC costs for nonprofit educational institutions was assessed as a surcharge to operating power reactors and approximately $6 million in reduced fees for small entities was assessed as a surcharge to all licensees that are not small entities.

Activities That Support Both NRC and Agreement State Applicants and Licensees

This area covers generic activities that are attributed to a specific class of NRC licensees but also support Agreement State licensees. These activities are associated with the NRC nuclear materials and uranium recovery regulatory program.

The NRC performs generic regulatory activities for nuclear materials users and uranium recovery licensees such as conducting research, developing regulations and guidance, and evaluating operational events. These generic activities provide the basis for NRC to regulate its approximately 7,000 materials and uranium recovery licensees, as well as for the twenty-nine Agreement States to regulate their 16,000 materials licensees. However, under OBRA-90, the NRC cannot charge the Agreement State licensees an annual fee to recover a portion of the cost of these activities because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 24,000) of the licensees can be assessed an annual charge to recover the cost of generic activities that support both NRC and Agreement State licensees. NRC licensees have indicated that this creates an unfair burden and competitive disadvantage for them. This means that about 70 percent of the generic regulatory costs (about $23 million) that are included in the annual fees for NRC materials and uranium recovery licensees could be considered as an unfair burden.

Legislative options. The NRC has identified the following legislative

[1] Section 161w. of the Atomic Energy Act authorizes the NRC to impose fees under 10 CFR part 170 on a Federal agency that applies for or is issued a license for a utilization facility designed to produce electrical or heat energy (e.g., licensing reviews and inspections of TVA's nuclear power plants) or which operates any facility regulated under sections 1701 or 1702 of the Atomic Energy Act (the enrichment facilities of the United States Enrichment Corporation).

options to address the issues discussed above.

1. Modify OBRA-90 to eliminate the costs of certain activities from the fee base so that the NRC is required to collect approximately 100 percent of its budget, less appropriations from the Nuclear Waste Fund (NWF) and the budgeted costs for other activities that would be specified by the NRC. With respect to this alternative, the NRC is particularly interested in receiving public comment on the following question: Should OBRA-90 be modified to remove all specified activities identified in the four items above from the fee base? If all four activities are excluded, approximately $61 million, based on the FY 1992 budget, would be removed from the fee base.

2. Modify OBRA-90 to permit the NRC to assess annual fees to organizations other than NRC licensees and approval holders that benefit from regulatory activities. For example, if this alternative is pursued, it could result in the NRC charging generic regulatory costs to NRC applicants. This would mean that the first applicant for a new class of license could be required to pay for all NRC regulation development and research costs to put a regulatory program in place to regulate an entire class of licensees.

3. Modify the Atomic Energy Act to permit the NRC to assess 10 CFR part 170 fees to Federal agencies, other than those that already are subject to such assessments, for identifiable services such as reviews, approvals and inspections where direct recovery for these costs is currently prohibited by IOAA. This would result in approximately $4 million in additional fees being collected from Federal agencies.

Policy changes. Policy changes to address the concerns with the surcharge include the elimination of exemptions currently contained in 10 CFR parts 170 and 171. This would include, for example, elimination of the exemption for nonprofit educational institutions.

II. Fluctuating Annual Fees

The amount of the annual fees fluctuates depending on the amount of the budget and the number of licensees available to pay the relatively fixed generic and other regulatory costs. Changes in the budget and the number of licensees can cause relatively large changes in the amounts of the annual fees. For example, the FY 1992 annual fee for some licensees increased by 50 percent due to these factors. Because of the timing of Congressional approval of the NRC's budget, it is not possible to give licensees much advance notice of these increases. Licensees have complained that it is unfair for the NRC to assess such large increases because they do not have sufficient warning to adjust prices and contracts to recover the increases.

Legislative Option

To minimize the potential of large increases in annual fees, one option would be to modify OBRA-90 to limit the annual fee increase for each class of licensees. Any cost not recovered as a result of this limitation would be excluded from the fee base. If this legislative option is pursued, should the increase be limited to the increase as reflected by the Consumer Price Index or some other fixed percentage, for example, 25 percent?

III. Simplifying the Development of Annual Fees

OBRA-90 requires that annual fees be established by rulemaking. Therefore, the NRC must publish a proposed rule for comments, evaluate the comments, and issue a final rule each year, even though the basic fee methodology and policy are unchanged from the previous year. This results in extra staff effort and delay in establishing the annual fees for a particular year.

In addition, the NRC has received comments indicating that the annual fees for operating power reactor licensees and fuel cycle licensees should be simplified. They point out that annual fees for the operating power reactor class of licensees are determined in three ways. First, within the operating power reactor class, a distinction is made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric, and Westinghouse. Second, within each vendor group, a distinction is made by the type of containment, for example, General Electric Mark I, II and III. Third, a distinction is made based on location of the reactor, that is, whether or not it is located east or west of the Rocky Mountains. As a result, the amount of the fees for any one vendor with a specific containment type could vary significantly from year to year leading one commenter to conclude that the "variability of the difference is greater than the attempted refinement" (56 FR 31479; July 10, 1991). Similarly, for the class of fuel cycle facilities a distinction is made between high enriched fuel fabrication, low enriched fuel fabrication, UF_6 conversion facilities and other fuel facility licensees. NRC's safety and safeguards budgeted costs are separately allocated to these classes.

The NRC is seeking comment on ways to simplify the process of establishing annual fees and simplifying the method for determining annual fees for operating power reactors and fuel fabrication licensees without causing an unfair burden.

Legislative Option

To simplify the process one option is to modify OBRA-90 so fee schedules can be published without soliciting public comment, provided the basic fee methodology and policies remain unchanged from the previous year.

Policy Changes

One option to address the different annual fees for various classes of operating power reactors and fuel facility licensees is to modify 10 CFR 171 to assess one uniform annual fee for all operating power reactors and one uniform annual fee for all fuel facilities.

IV. Expanded Scope for 10 CFR Part 170

The authority for NRC's assessment of the 10 CFR part 170 licensing, approval, and inspection fees by the NRC is the IOAA. The 10 CFR part 170 fees are assessed for specific services rendered by the NRC to identifiable applicants and licensees. Two Supreme Court cases and four Circuit Court decisions relating to the Federal Communications Commission (FCC) and the Federal Power Commission (FPC) fees assessed under the authority of the IOAA, as well as a Fifth Circuit Court of Appeals case relating to IOAA-type NRC fees, have provided additional guidance to the NRC in fee assessment under 10 CFR part 170. The past and current 10 CFR part 170 fees were established based on these court decisions.

Based on the courts' guidance, NRC IOAA-type fees have been structured and are assessed for the review of applications for and the issuance of (1) new licenses; (2) amendments and renewals to existing licenses; (3) approvals, such as topical reports; and (4) for inspections. Under the current 10 CFR part 170 fee policy, an application must be filed for a new license, an amendment, renewal, or approval; or an inspection must be conducted by the NRC in order for a 10 CFR part 170 fee to be assessed.

The courts' decisions on which the current 10 CFR part 170 fees are based were issued before the OBRA-90 requirement to recover 100 percent of the NRC's budget authority through fees. Because there are instances where NRC performs specific services for identifiable applicants, licensees, or other organizations that do not meet existing policy for assessing 10 CFR part

170 fees, the costs of these services are recovered through 10 CFR part 171 annual fees assessed to all licensees in a particular class. If the costs of these types of activities were recovered under 10 CFR part 170, the annual fee would be decreased.

The NRC is seeking comments on the option of broadening the scope of 10 CFR part 170 to recover costs incurred for specific actions for identifiable recipients because of the interrelationship of 10 CFR parts 170 and 171 in recovering 100 percent of the NRC budget authority. Some of these activities are identified and listed below. The listing provided is not intended to be all-inclusive.

1. Incident Investigation Teams (IITs)

The purpose of the agency's incident investigation program is to investigate significant operational events involving power reactors and other facilities in a systematic and technically sound manner. Causes of the events are determined so the NRC can take corrective actions. An incident investigation team investigates events of a potentially major significance. Currently the costs of these investigations are recovered through annual fees.

2. Vendor Inspections

NRC conducts inspections of suppliers of nuclear components, materials, and services in response to specific hardware failures, regulatory concerns, or allegations to determine whether these suppliers are in compliance with applicable NRC and industry requirements. Currently part 170 fees are not assessed for these inspections because vendors are not applicants or licensees of the Commission. The costs of these inspections are recovered through annual fees assessed to power reactors.

3. Allegations

NRC conducts investigations of allegations of wrongdoing by NRC licensees and others within its regulatory jurisdiction. NRC also conducts inspections of allegations made by third parties regarding specific licensees. Not all allegations are substantiated. The Commission previously decided it would not charge 10 CFR part 170 fees for inspections resulting from third party allegations (49 FR 21298; May 21, 1984). The budgeted costs for these investigations are recovered from each class of licensees through annual fees.

4. Site Decommissioning Management Plan (SDMP)

NRC performs reviews and conducts inspections with respect to those companies identified in the Site Decommissioning Management Plan to ensure the clean-up of the sites. Currently, 10 CFR part 170 fees are not assessed because the companies are not NRC applicants or licensees. The budgeted costs for these reviews and inspections are recovered from fuel facilities and materials licensees through annual fees.

5. Reviews That Do Not Result in Formal NRC Approvals

The NRC performs reviews that do not result in the issuance of formal or legal approvals. For example, the NRC staff reviews the results of the Individual Plant Exams (IPE) submittals requested by a generic letter and prepares a draft Safety Evaluation Report (SER) on the findings. 10 CFR part 170 fees are not assessed because the IPE review does not result in a letter of approval or an amendment to the technical specifications or license. NRC also conducts Probabilistic Risk Analysis (PRA) reviews of specific reactors. These reviews have resulted in the generation of a SER. The SER provides a general description of the staff's conclusions on the strengths and weaknesses of the PRA, with more specific conclusions on areas identified by NRC as subject to potential licensing action, such as changes in the technical specifications. 10 CFR part 170 fees are not assessed because the review does not result in a letter of approval or an amendment to the technical specifications or license. Another example is NRC's review of financial assurance/decommissioning funding plans or medical quality management programs. NRC review of such submittals does not result in an approval or license amendment. Therefore, no 10 CFR part 170 fee is currently assessed. To recover 100 percent of the budget authority, the budgeted costs for these reviews are recovered through annual fees.

6. Orders to Licensees and Amendments Resulting From Those Specific Orders

NRC issues orders to licensees and reviews and approves amendments to licenses resulting from the specific orders. Under current policy (contained in footnote 1 to § 170.21 and footnote 2 to § 170.31), 10 CFR part 170 fees are not assessed for the orders or amendments resulting from the orders because the NRC, on its own initiative, issues an order. The order is not incident to a voluntary act because the licensee does not request it. Similarly, amendments resulting from orders are not assessed 10 CFR part 170 fees because such amendments are not filed voluntarily by the licensee but are filed as a requirement of the order. The budgeted costs of these activities are recovered through annual fees to all licensees.

7. Contested Hearings

Contested hearings are conducted by the NRC on specific applications, usually at the request of intervenors. The Commission previously decided not to charge fees for contested hearings because a hearing gives the public an opportunity to intervene or participate in the licensing process and serves an educational purpose (42 FR 22159; May 2, 1977). The budgeted costs are recovered through annual fees assessed to all licensees of a particular class.

Policy Changes

One option to address the actions for applicants, licensees, or other organizations identified above is to modify 10 CFR part 170 to recover the costs incurred for specific actions from the identifiable recipients.

American Mining Congress Petition (PRM–170–4)

The Petitioner

The American Mining Congress (AMC), which filed a petition for rulemaking on February 4, 1993, is a national trade association of mining and mineral processing companies that includes owners and operators of uranium mills, mill tailings sites, and *in situ* uranium production facilities who are NRC licensees. Members of the AMC who use byproduct radioactive materials must be licensed by either the NRC or an Agreement State. Because the issues raised by the petition concern the same subject as the Energy Policy Act fee requirement, the NRC is also requesting public comment on the issues raised in PRM–170–4 in this document.

Adverse Impacts on the Petitioner

The AMC has submitted this petition for rulemaking on behalf of its members that hold NRC licenses because it believes they have been adversely affected by the current license fee rule. The petitioner states that many of its members who hold NRC licenses are Class I uranium recovery sites that have ceased operations and are waiting for NRC approval of reclamation plans, or are on standby. The petitioner believes it unfair that these facilities must

continue to pay the NRC an annual fee because they no longer generate revenue and require very little NRC supervision. The petitioner also asserts that some of these facilities have been awaiting NRC approval of final reclamation plans for as long as six or seven years, but in the meantime must continue to pay the NRC an annual fee.

The Petitioner's Concerns

The petitioner's primary concern is that a system that allows an agency to recover 100 percent of its costs invites regulatory abuse as there are no safeguards present to ensure that fees are collected in relation to the amount of necessary NRC oversight and regulation. The petitioner states that, under the current fee system, the NRC is not accountable to anyone and has no oversight or quality control for inspection efforts. There are no limits on how often inspections occur, no provisions for licensees to object to costs, and no assurance for expeditious service by the NRC.

The petitioner claims the NRC is violating the "fundamental principle of law" that a reasonable relationship must exist between the cost to licensees of a regulatory program and the benefit derived from the regulatory services. The petitioner believes the 87 percent increase in fees for Class I facilities over the prior year is excessive in comparison with the 6 percent increase in the annual NRC appropriation. The petitioner believes that fee increases should be consistent with the NRC practice of using the consumer price index for annual adjustment of surety bonds. The petitioner believes the annual fee is exorbitant for Class I uranium recovery sites, especially those that have ceased operations and have been waiting for several years for NRC approval of reclamation plans.

The petitioner also states that the $123 hourly charge for regulatory services is excessive for NRC staff efforts and notes that such an amount is equivalent to the rate charged by a senior consultant at a nationally recognized consulting firm.

The Petitioner's Proposals

The petitioner requests that 10 CFR parts 170 and 171 be amended to alleviate the inequitable impacts of NRC-imposed fees on its members, specifically for Class I uranium recovery sites that have ceased operation and await NRC approval of reclamation plans. The petitioner also suggests that the NRC implement certain standards for services provided. The petitioner offers the following specific suggestions for ensuring that the fee schedule bears a reasonable relationship to the benefit provided by NRC oversight and regulation.

1. The petitioner suggests the implementation of a system that allows NRC licensees to have some control over fees they are assessed. According to the petitioner, no rational relationship exists between the fees charged by the NRC and the benefits derived by its licensees. A licensee review board should be established that reviews the NRC fee system annually, monitors NRC inspection activities to prevent regulatory abuse, and proposes revisions to the fee system to eliminate inequitable treatment of licensees.

2. The petitioner suggests that the NRC develop a consistent method for applying charges. The petitioner believes that the NRC should supply licensees with a cost sheet that describes charges for various types of services and a specific response interval schedule that prescribes deadlines for all NRC regulatory services. This would eliminate inequities that may occur when the processing of simple amendment requests takes some NRC staff members longer than others to complete. The petitioner also suggests that the NRC establish time limits for processing, such as 30 days for simple license amendment requests, and publish the response times for various regulatory services in a table that would be distributed to licensees.

3. The petitioner suggests that the NRC provide a more complete and detailed accounting of the services it provides. Currently, the NRC lists only the hours spent and the hourly rate on bills sent to licensees. In addition to simply listing the time spent and the hourly rate, the petitioner believes that NRC charges should be itemized to also include a description of the work performed, the name(s) of the individual(s) who performed the work, and the dates on which the work was performed.

4. The petitioner suggests that the NRC eliminate factors that contribute to the inequitable treatment of licensees. The petitioner believes that fees should be waived for facilities that no longer generate revenue and require very little NRC supervision, such as for uranium fuel cycle sites that have ceased operation and are waiting for NRC approval of reclamation plans. According to the petitioner, the intent of Congress in enacting the Omnibus Budget Reconciliation Act of 1990 was that non-power reactor facilities should be exempt for the most part from annual fees because they comprise less than three percent of the NRC's regulatory costs. The petitioner also believes that the Department of Energy (DOE) is improperly receiving NRC oversight and review of its mill tailing site reclamation activities without being charged fees by the NRC. Furthermore, NRC attention to DOE sites prevents adequate NRC resources to be committed to address private sector licensing matters, resulting in exorbitant costs to certain NRC licensees who must continue to pay the NRC fees for many years while awaiting NRC action.

The Petitioner's Conclusion

The petitioner has identified several significant adverse impacts which it claims have affected its members as a result of the current NRC fee system which provides for inequitable treatment of licensees and the potential for regulatory abuse. The petitioner believes that the fees imposed by the NRC unfairly burden its uranium recovery facilities that have ceased operation and are awaiting NRC approval of reclamation plans, in some cases for many years. The petitioner requests that the NRC consider its proposals to amend the rules in 10 CFR parts 170 and 171.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

The authority citation for this document is: Sec. 2903(c), Public Law 102–486, 106 Stat. 3125.

Dated at Rockville, Maryland this 13th day of April 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–8965 Filed 4–16–93; 8:45 am]

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Enclosure 2

Comments - Reactor Licensees and Their Representatives

1.	Aerotest	(149)
2.	Arizona Public Service Co.	(534)
3.	B&W Owners Group	(528)
4.	Carolina Power & Light Co.	(527)
5.	Centerior Energy	(524)
6.	Commonwealth Edison	(473)
7.	Duke Power Co.	(523)
8.	Duquesne Light Co.	(520)
9.	Entergy	(488)
10.	Florida Power & Light Company	(519)
11.	General Atomics	(151) (532)
12.	Georgia Power	(493)
13.	Karl W. Gross, Reactor Operator	(460)
14.	Northeast Utilities	(526)
15.	NUMARC	(475)
16.	Pennsylvania Power & Light Co.	(522)
17.	Philadelphia Electric Co.	(529)
18.	Southern California Edison Co.	(508)
19.	South Carolina Electric & Gas Co.	(444)
20.	Southern Nuclear Operating Company	(494)
21.	TU Electric	(463)
22.	Union Electric	(141)
23.	Virginia Power	(535)
24.	Washington Public Power Supply System	(480)
25.	Winston & Strawn	(509)

Comments - Fuel Facility Licensees and Their Representatives

1.	ABB-Combustion Engineering	(518)	
2.	Allied Signal	(495)	
3.	American Mining Congress	(496)	(554)
4.	B&W Fuel Company	(474)	
5.	Hunton & Williams	(552)	
6.	Louisiana Energy	(489)	
7.	Rio Algom Mining Corporation	(505)	
8.	Siemens Power Corporation	(512)	
9.	U.S. Council for Energy Awareness	(510)	
10.	Westinghouse Electric Corporation	(492)	

Comments - Educational Licensees and Their Representatives

1.	American Council on Education	(541)
2.	American Society for Engineering Education	(557)
3.	Central Michigan University	(555)
4.	Christopher Plavney	(483) (516)
5.	Cornell University	(490)
6.	Eastern Michigan University	(507)
7.	Fermin M. Perez	(542)
8.	Georgia State University	(1)
9.	John R. Anderson	(560)
10.	Margaret R. Kunselman	(461)
11.	Massachusetts Institute of Technology	(481) (547) (566)
12.	Mount Holyoke College	(533)
13.	National Organization of Test, Research and Training Reactors (TRTR)	(546)
14.	National Science Foundation	(521)
15.	North Carolina State University	(543)

16.	Ohio State University	(464) (466) (472) (544) (545)
17.	Oregon State University	(558)
18.	Penn State University	(465)
19.	Princeton University	(457)
20.	Purdue University	(430)
21.	Saint John's University	(538)
22.	Saint Mary's College	(559)
23.	Simmons College	(564)
24.	Smith College	(530)
25.	South Dakota State University	(549)
26.	University of California-Irvine	(548)
27.	University of Cincinnati	(553)
28.	University of Delaware	(138)
29.	University of Florida	(556)
30.	University of Illinois	(504)
31.	University of Massachusetts	(459)
32.	University of Miami	(531)
33.	University of Michigan	(561)
34.	University of Missouri (Rolla)	(550)
35.	University of Texas	(537)
36.	University of Wisconsin	(551)
37.	Washington & Lee University	(539)
38.	Washington State University	(536)
39.	Xavier University	(563)

Comments - Medical Licensees and Their Representatives

1.	American Association of Clinical Endocrinologists	(434)
2.	American College of Nuclear Physicians	(511)
3.	American College of Radiology	(517)
4.	Association of Independent Research Institutes	(497)
5.	Colorado Hospital Assn.	(503)
6.	Dean W. Broga, Ph.D.	(486)
7.	Elias C. Dow, M.D.	(449)
8.	HCA Johnston-Willis Hospital	(471)
9.	Hospital Association of Pennsylvania	(485)
10.	Hospital Pavia	(62)
11.	Hot Springs County Memorial Hospital	(478)
12.	John R. Sinkey, M.D.	(453)
13.	Lahey Clinical Medical Center	(421)
14.	Medical College of Wisconsin	(2)
15.	Metabolism Associates	(67)
16.	New England Medical Center	(514)
17.	Northern Virginia Endocrinologists	(4)
18.	Richard B. Guttler, M.D.	(439)
19.	Stan A. Huber Consultants, Inc.	(5)
20.	St. John's Mercy Medical Center	(441)

Licensees - Industrial

1. AGG Rok Materials (98)
2. Air Transport Assn. (515)
3. Apgee Corporation (484)
4. Applied Geoscience & Engineering (433)
5. Applied Radiant Energy Corporation (540)
6. Atchison Casting (452)
7. Berthold Systems, Inc. (501)
8. Bowen & Lawson (60) (422)
9. Braun Intertec (491)
10. City of Toledo, Ohio (442)
11. Consol Inc. (143)
12. Duratek (455)
13. Earthtec Inc. (562)
14. Ebasco (477)
15. Froehling & Robertson (429)
16. Frontier Logging Corporation (75)
17. Glovier & Associates, Inc. (6)
18. Glover Construction Co., Inc. (146)
19. Grinnell Corporation (450)
20. Homestake Engineering (454)
21. Intermountain Testing Co. (502)
22. International Hydronics (59)
23. IRRITEC (500)
24. Isomedix (435)
25. J. H. Shears' Sons, Inc. (123)
26. John R. Mercier, H. P. (458)
27. McDonald-Maas Associates (144)
28. Merillat (7)
29. Metropolitan Waste Control Commission (482)
30. National Asphalt Pavement Assoc. (150)
31. Novagen (424)
32. Okanogan County Dept. of Public Works (476)
33. Pashelinsky Smelting & Refining Corp. (61)

34. Passaic Valley Water Commission (451)
35. Radiation Monitoring Devices, Inc. (427)
36. Springfield Water Department (436)
37. Stocker & Yale, Inc. (487)
38. Teledyne Engineering Services (565)
39. TERRA Engineering & Construction Corp. (3)
40. Troxler Electronic Laboratories, Inc. (8) (467)
41. Vecellio & Grogan, Inc. (145)
42. Wilson Engineering (423)
43. Yankee Engineering & Testing, Inc. (425)

COMMENTS REFERENCING TROXLER ELECTRONIC LABORATORIES, INC. FORM LETTER (COMMENT NUMBER 8) DATED 5/19/93

44. Ackenheil & Associates (139)
45. Ackenheil Engineers, Inc. (363)
46. Adams Construction Co. (16) (53)
47. Ajax Paving Industries (448)
48. Allied Construction Technologies, Inc. (315)
49. Allied Corporation, Inc. (63)
50. Allied Testing Labs, Inc. (394)
51. Ambric Engineering, Inc. (158) (358)
52. Ambric Testing & Engineering Associates of VA (152)
53. Ambric Testing & Engineering Associates of PA (157)
54. Ambric Testing Assoc. of New Jersey, Inc. (216)
55. American Engineering & Testing, Inc. (446)
56. Anco Testing Laboratories, Inc. (101) (250)
57. Anderson Engineering, Inc. (302)
58. APAC-Virginia, Inc. (251)
59. ARTCO Contracting, Inc. (382)
60. Ashco, Inc. (192)
61. Asphalt Materials Inc. (190)
62. Asphalt Road & Materials Co., Inc. (22)

63. Asphalt Paving, Inc. (364)
64. Atec Associates, Inc. (187) (296)
65. Banner Associates, Inc. (44)
66. Bardon Trimount, Inc. (389)
67. Barrett Paving Materials, Inc. (54)
68. Barrientos & Associates, Inc. (140)
69. BBC & M Engineering, Inc. (219)
70. Beaver Excavating Co. (15)
71. Becher-Hoppe Engineers (409)
72. Beery & Assoc., Inc. (329)
73. Bellezza Company, Inc. (212)
74. Bernardin, Lochmueller & Assoc. Inc. (213)
75. Berrien County Road Commission (202)
76. Betteroads Asphalt Corporation (262)
77. Blacktop Products Co. (56)
78. Blair Bros., Inc. (330)
79. Blazosky Associates, Inc. (29)
80. Blue Rock Industries (206)
81. Borings Soils & Testing, Co. (255) (256)
82. Boss Engineering (347)
83. Bowen Construction Co. (19)
84. Bowen Engineers & Survey (199)
85. Bowers & Assoc. (227)
86. Bowser Morner, Inc. (271)
87. Braken Construction Co. (97)
88. Bridge Construction Corp. (121)
89. Brooks Construction Co., Inc. (203)
90. Bruschi Brothers, Inc. (311)
91. Bucher, Willis & Ratliff (130)
92. Buckley - Lages, Inc. (26) (81)
93. Burgess & Niple (72) (295)
94. Byrne Sand & Gravel Co., Inc. (384)
95. Campbell Paris Engineers (307)
96. Capital Consultants, Inc. (156)
97. Canonie Environmental (31) (83)

98. Carl Kelly Paving (279)
99. C. C. Mangum, Inc. (248)
100. Central Paving Co. (301)
101. Charleston Construction Co. (11)
102. Chester Bros. Consturction Co. (412) (437)
103. CHMP, Inc. (134)
104. City of Bryan, Ohio (416)
105. City of Detroit, Michigan (287)
106. City of Flint, Michigan (162)
107. City of Goshen, Indiana (249)
108. City of Kettering, Ohio (392)
109. City of Newport News, VA (185)
110. City of Sault Ste. Marie, Michigan (291)
111. City of West Bend, Indiana (169)
112. Civil Engineering Services (207)
113. Civil & Environmental Consultants, Inc. (177)
114. CMC Engineering (222)
115. Cole Associates (186)
116. Commercial Asphalt Co. (9)
117. Commonwealth of Virginia (377)
118. Compton Construction Co. Inc. (88)
119. Con-Spec, Inc. (274)
120. Construction Design Consultants (338)
121. Construction Engineering Consultants, Inc. (359)
122. Construction Services Assoc. (181)
123. Construction Testing Services, Inc. (242)
124. County of Fairfax, VA (232)
125. County of Henrico, Virginia (166)
126. County of St. Clair (215)
127. C. T. Consultants, Inc. (278)
128. CTI & Assoc., Inc. (155)
129. CTL of Virginia, Inc. (104)
130. Cumberland Geotechnical (99)
131. Cuyahoga County Engineers Testing Lab (118)
132. D'Appolonia (161)

133. David Blackmore & Assoc., Inc. (383)
134. Dell Contractors (167)
135. Donaldson Mine Company (375)
136. Donegal Construction Corp. (297)
137. EACCO Construction Co. (173)
138. Earth Engineering, Inc. (373)
139. Ebasco (418)
140. Earth, Inc. (195)
141. Earth Exploration, Inc. (336)
142. Ebony Construction Co., Inc. (349)
143. EDP Consultants, Inc. (95)
144. E. L. Conwell & Co. (30) (90)
145. Elkhart County Highway Department (180)
146. Empire Construction & Materials, Inc. (267)
147. EMSI Engineering, Inc. (170)
148. Engineering & Testing Consultants, Inc. (419)
149. Engineering Mechanics, Inc. (312) (388)
150. Engineering & Testing Services, Inc. (351) (380)
151. English Construction Co., Inc. (93)
152. Erdman, Anthony Assoc., Inc. (293)
153. Esmer & Assoc., Inc. (354)
154. E. T. & L. Construction Corp. (324)
155. E. V. Williams Co., Inc. (132) (260)
156. Farlow Environmental Engineers, Inc. (86) (362)
157. Fenwick Enterprises, Inc. (253)
158. Flexible Pavements, Inc. (114)
159. Flexible Pavements Council of W.Va. (360)
160. Foster Grading Co. (244)
161. Foxfire Consultants, Inc. (28)
162. Frank Bros., Inc. (117)
163. Gannett Fleming, Inc. (172)
164. Gaunt & Son Asphalt, Inc. (320)
165. GEI Consultants (411)
166. General Engineering Company, Inc. (366)
167. Gennaro Pavers, Inc. (74)

168. George Harms Construction Co., Inc. (269) (381)
169. George & Lynch, Inc. (264)
170. Geo-Science Engineering Co., Inc. (125)
171. Geotechnical Group, Inc. (66)
172. Geotecnics, Inc. (323)
173. Geotech Inc. (148)
174. Geo-Test, Ltd. (178)
175. Gerken Materials, Inc. (17)
176. Gilmore & Assoc. Inc. (355)
177. Glasgow, Inc. (76)
178. G. M. T. Inc. (408)
179. Gohmann Asphalt & Construction Co. (37)
180. Golder Assoc., Inc. (397)
181. Gosling Czubak Assoc. (209)
182. Goyle Engineering, Inc. (78)
183. Grannas Bros. Contracting Co., Inc. (289)
184. Grindle & Bender (68)
185. Gust K. Newberg Construction Co. (321)
186. Haines and Kibblehouse, Inc. (228)
187. Haley & Aldrich, Inc. (374)
188. Haller Testing Labs (137)
189. Hamilton & Assoc. (396)
190. Hancock Asphalt & Paving, Inc. (71)
191. Hanson Testing & Engineering, Inc. (378)
192. Harms Inc. (116)
193. Hatcher-Sayre, Inc. (395)
194. Hayes, Seay, Mattern & Mattern (304) (305)
195. Heffner Construction Co. (106)
196. Hempt Bros., Inc. (280)
197. Hennessey Engineers, Inc. (401)
198. Herbert and Assoc., Ltd. (350)
199. Herzog Contracting Corp. (335)
200. Highway Materials, Inc. (58)
201. Hills Materials Company (13)
202. H&D Inc. (40)

203. H. J. Schneider Construction, Inc. (339)
204. Hobet Mining Inc. (225)
205. Hornor Brothers Engineers (18) (82)
206. HRI Inc. (184) (346)
207. Hunt Engineers, Inc. (348)
208. Huntington Asphalt Corporation (352)
209. Hurt & Proffitt, Inc. (233)
210. Indianapolis Airport Authority (406)
211. Independent Materials Testing Labs, Inc. (85)
212. Inspectorate (220)
213. Interstate Construction Corp. (333)
214. Isabella County Road Commission (160)
215. James D. Cummins Co., Inc. (198)
216. Jeff Zell Consultants (163)
217. Jersey Technology Labs, Inc. (322)
218. J. H. Rudolph & Co., Inc. (128) (129)
219. J&L Engineering, Inc. (27)
220. John E. Munsey (445)
221. John T. Boyd Company (188)
222. Johnson Soils Engineering Co. (122)
223. Julian & Wilmarth, Inc. (34)
224. Kent County Michigan Bd. of Public Works (240)
225. Kent County Road Commission (224)
226. Keystone Landfill, Inc. (420)
227. Keystone Lime Co., Inc. (398) (399)
228. Key Tech (261)
229. KFC Airport, Inc. (102)
230. Killam Associates (231) (410)
231. Klug Bros., Inc. (371)
232. K & M Construction Co. (393)
233. Knight Consulting Engineers, Inc. (309)
234. Koester Contracting Corp. (96)
235. Kokosing Materials, Inc. (230)
236. K & S Testing & Engineering, Inc. (285)
237. Kupper & Co. (133)

238. Lawhorne Brothers (32)
239. L-C Associates, Inc. (110)
240. Lee Highway Paving Corp. (282)
241. Lee-Simpson Assoc., Inc. (235)
242. Limestone Products Corp. (313)
243. Livingston County Road Comm. (254)
244. L. Robert Kimball & Assoc., Inc. (196)
245. MAC Construction Co. (298) (299)
246. Macallum Testing Labs, Inc. (283)
247. Mackin Engineering Co. (36)
248. Macomb County Road Commission (332)
249. Management Engineering Corporation (179)
250. Marvin-Moberly Construction Co. (100)
251. Marvin V. Templeton & Sons, Inc. (35)
252. Mashuda Corp. (193) (276) (277)
253. Mas[illegible]e Verteuil Geotechncial Services (41) (252)
254. Massachusetts Bay Transportation Authority (52)
255. Mayer Bros. Construction Co. (415)
256. M-B Contracting Co., Inc. (14)
257. McCallum Testing Laboratories, Inc. (45)
258. McTish, Kunkel & Assoc. (300)
259. Mead & Hunt, Inc. (175)
260. Mega Contractors, Inc. (57)
261. Melick-Tully & Associates, Inc. (153)
262. Meshberger Brothers Stone Corp. (194)
263. Midland County Road Commission (316)
264. Midwest Environmental Consultants, Inc. (405)
265. Midwestern Consulting, Inc. (387)
266. Miller Associates (403)
267. Miller Bros. Construction, Inc. (165)
268. Miller-Mason Paving (303)
269. Moore Brothers Company, Inc. (77)
270. Moore & Bruggink (218)
271. Morrison-Maierle (131)

272. Morley and Assoc., Inc. (428)
273. M. S. Consultants, Inc. (310)
274. Mt. Pleasant Central Asphalt Paving Co. (126)
275. Muskegon County Road Comm. (243)
276. New Prince Concrete Construction Co. (226) (308)
277. Nordlund & Assoc., Inc. (204)
278. Northwoods, Inc. (286)
279. Northeastern Road Improvement Co. (247)
280. Norwood Asphalt Products (92)
281. NTH Consultants, Ltd. (265)
282. Nowak & Fraus Corp. (413)
283. Ohio Valley Electric Corp. (356)
284. Ohio Valley Paving Corp. (353)
285. OHM Remediation Services Corp. (379)
286. Old Forge Testing Co. (46)
287. Oldover Corp. (361)
288. OMM Engineering (176)
289. Orders Construction Co. (87)
290. Orders & Haynes Paving Co. (197)
291. Oscoda County Road Commission (211)
292. Ottawa County Road Commission (221)
293. Pavers, Inc. (317)
294. P.C. Goodloe & Son, Inc. (39) (79)
295. Penn-Carrington Engineering Group (154)
396. Pennsylvania Asphalt Pavement Assoc. (111)
297. Pennsylvania Testing Labs (105)
298. Phend & Brown, Inc. (214)
299. Pike Industries, Inc. (168)
300. Port Engineering Assoc., Inc. (245)
301. Potomac Construction Co. (272)
302. Professional Engineering Assoc., Inc. (200)
303. Professional Service Industries of MA (376)
304. Professional Service Industries of PA (400)
305. PSI Energy (127)
306. Quality Environmental Services, Inc. (229)

307. Ranger Fuel Corp. (294)
308. RBS Inc. (38)
309. REA Construction (107)
310. Rieth-Riley Construction Co., Inc. (135) (171) (367)
311. Rissler & McMurry, Co. (112)
312. Robert A. Kinsley, Inc. (266)
313. Rock Road Companies, Inc. (259)
314. Rogers Group, Inc. (65)
315. Regional Services Corp. (147)
316. R. H. Armstrong, Inc. (33)
317. Richard H. Howe (275)
318. Road Commission, Oakland County, Michigan (386)
319. Rogers Group, Inc. (318)
320. Roncari Industries (43)
321. Roofing Consultants of VA, Inc. (263)
322. Roy N. Ford Co., Inc. (73)
323. R. S. Scott Associates, Inc. (47)
324. Rust Environmental & Infrastructure (223)
325. S. A. Charnas, Inc. (113)
326. Saginaw Asphalt Paving Co. (103)
327. SAI Consulting Engineers, Inc. (246)
328. Samtest, Inc. (326)
329. Sanilac County Road Commission (345)
330. Sarver Paving Co. (20)
331. Schloss Paving Co. (417)
332. Schnabel Engineering Assoc. (119)
333. SCI Consultants, Inc. (370)
334. Scott Civil Engineering Co. (443)
335. Scott Construction Co. (189)
336. Scott Consulting Engineers (80)
337. S. E. Johnson/Stoneco, Inc. (237)
338. Seneca Petroleum Co., Inc. (124)
339. Shelly Company (234)

340. Shilts, Graves & Associates, Inc. (51) (70)
341. Site Engineers, Inc. (201) (217) (325)
342. Slusser Bros. Trucking & Excavating Co. Inc. (120)
343. Soil Consultants, Inc. (281)
344. Soil Testing, Inc. (94)
345. Soils & Engineering Services, Inc. (136)
346. Soils & Materials Engineers, Inc. (258)
347. Sumat Engineering (238)
348. South Atlantic Coal Co. (241)
349. South State, Inc. (268)
350. Southern West Virginia Paving, Inc. (319)
351. S. R. Draper Paving Co., Inc. (257)
352. Stack Engineering (407)
353. Stafford Consultants (10)
354. Standard Testing and Engineering Co. (42)
355. Stavola Company (391)
356. STS Consultants Ltd. (369)
357. Stuart M. Perry, Inc. (290)
358. STV Sanders & Thomas (284)
359. Summit Testing & Inspection Co. (343)
360. Summers Construction Co., Inc. (327) (342)
361. Superior Asphalt Company (341)
362. S. W. Cole Engineering, Inc. (344)
363. Swecker Engineering & Surveying (12)
364. Sweetland Engineering (273)
365. T. A. Houston & Assoc. (174)
366. Technical Testing, Inc. (142)
367. Terry Eagle Coal Co. (438)
368. Testing Engineers & Consultants, Inc. (159)
369. Testwell Craig Labs of CT., Inc. (208) (239)
370. Tibbetts Engineering Corp. (365)
371. Tikon Maine, Inc. (191)
372. T. J. Campbell Construction Co. (64)
373. Trap Rock Industries, Inc. (23)

374. Triad Engineering (50) (84) (337)

375. T. R. Valentine & Assoc., Inc. (108)

376. Valley Asphalt Company (314) (390)

377. Valley Asphalt Corporation (55)

378. Valley Forge Laboratories, Inc. (447)

379. Valley Sanitation Co., Inc. (164)

380. Vanderburgh County Engineering (334)

381. Vantage Paving, Inc. (49) (109)

382. Vermont Testing (236)

383. VHB Associates (404)

384. Viking Coal Company, Inc. (25)

385. Watts Contractors, Inc. (69)

386. Wehran Engineering (288)

387. Weldon Asphalt Co. (182)

388. West Penn Asphalt Paving Co., Inc. (292)

389. West Virginia Division of Highways (183)

390. West Virginia Testing, Inc. (205)

391. Whitman & Howard (328)

392. Whitworth-Muench Co. (414)

393. Widmer Engineering, Inc. (357)

394. Wightman Environmental, Inc. (368)

395. Wilbur Smith Associates (372)

396. William F. Loftus Assoc. (331)

397. William Beaudoin & Sons, Inc. (48)

398. William A. Green Assoc. (340) (525)

399. Wine Construction Inc. (402)

400. Whitta Construction Co. (21)

401. Windsor Service, Inc. (24)

402. Wolverine Engineers (431)

403. Woodward-Clyde Consultants (270) (385)

404. Wyandet Dolomite Assoc. (89) (91)

405. Wyoming Sand & Stone Co. (201)

406. Zannino Engineering (115) (306)

Federal Agencies

1. Department of Army (506)
2. Department of Energy (498) (499)
3. Department of Veterans Affairs (456)
4. U.S. Department of Agriculture (432)

State Agencies and Their Representatives

1.	Minnesota Department of Health	(440)
2.	Organization of Agreement States	(468)
3.	State of Colorado	(513)
4.	State of Florida	(469)
5.	State of Hawaii	(426)
6.	State of Illinois	(462)
7.	State of Washington	(470)
8.	Texas Radiation Advisory Board	(479)

Enclosure 3

FY 1993 Fees Related To
Fairness and Equity Concerns
($ In Millions)

	Total	Current Allocation	
		Power Reactors	Other Licensees
Activities Not Related to an Existing NRC Licensee			
International	$8.4	$8.4	--
Low-Level Waste	9.2	6.7	2.5
Agreement State Oversight	3.8	3.1	0.7
Subtotal	$21.4	$18.2	$3.2
Activities Not Assessed To Direct Beneficiary Due to Legislative or Policy Constraints			
Part 170 Exemption for DOE and Other Federal Agencies	5.7	5.2	.5
Non-Profit Educational Exemption	7.1	7.1	--
Small Entity	5.4	4.6	0.8
Subtotal	$18.2	$16.9	$1.3
Share of NRC Regulatory Activities that also Support Agreement State Licensees	15.0[1]	--	15.0
Total	$54.6	$35.1	$19.5

[1]Represents 70 percent of the cost for generic regulatory activities (e.g., rulemaking, research, program development, and operating experience evaluations) that support both NRC and Agreement State material licensees.