

AG08-2  
PDR

**From:** Sandra Figueroa  
**To:** James Turdici  
**Date:** 5/27/99 9:32am  
**Subject:** FINAL NOTICE OF RULEMAKING - 10 CFR PARTS 170 & 171

OE, Jim Lieberman, concurs.

**CC:** James Lieberman

Here are OGC comments  
on everything except  
PP 27-29 which we  
are still working on.

AG08-2  
PDR

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG08

*Temp*

T901 OGC  
Comments  
5/28/99  
29

Revision of Fee Schedules; 100% Fee Recovery, FY 1999

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1999, less amounts appropriated from the Nuclear Waste Fund (NWF) and ~~\_\_\_\_\_~~. The amount to be recovered for FY 1999 is approximately \$449.6 million.

EFFECTIVE DATE: (60 days after publication in the Federal Register.)

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555-0001. Comments received may also be viewed and downloaded electronically via the interactive rulemaking website established by the NRC for this rulemaking. ⇒ give website here.

X

*delete  
for  
Carol  
Hobbs  
(proposed rule +  
comments are  
eliminated  
from website  
when final  
rule is  
put there)*

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone 301-415-6057.

**SUPPLEMENTARY INFORMATION:**

- I. Background.
- II. Responses to Comments.
- III. Final Action.
- IV. Plain Language.
- V. Environmental Impact: Categorical Exclusion.
- VI. Paperwork Reduction Act Statement.
- VII. Regulatory Analysis.
- VIII. Regulatory Flexibility Analysis.
- IX. Backfit Analysis.
- X. Small Business Regulatory Enforcement Fairness Act.

**I. Background**

Certain NRC costs were excluded from the fee base by the FY 1999 Energy and Water Development Appropriations Act

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) as

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) ~~and the General Fund~~

*[Handwritten scribble]*

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. 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.

## II. Responses to Comments

A total of thirty-four comments were received on the proposed rule. Although the comment period ended on May 3, 1999, the NRC evaluated the 26 comments which were

received by the close of business on May 5, 1999. The NRC was unable to consider the eight

comments which were received after May 5, 1999, *as they were not received in time for selection by the NRC staff and the Commission to evaluate them in the next time period available*

*bully*

Many of the comments were similar. These comments have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows:

3

*limited period available for preparing a final rule in the expedited rulemaking proceedings. In any*

*event, a substantive dry new issues ~~comment~~ cursory review did not cancel of these late comments*

A. Legal Issues.

Several commenters raised questions about NRC's legal interpretation of OBRA-90 and the IOAA. These comments are addressed first because their resolution establishes the framework for addressing subsequent issues raised by commenters. ✓

The commenters attempted to present a balanced view of the proposed fee schedule, and even applauded the NRC's "considerable effort over the past year to reduce inefficiencies through strategic planning and reorganizations." Nonetheless, it is abundantly clear that most commenters believe that the NRC has a long way to go to reach a truly fair and equitable system of fee allocation. Several commenters asserted that NRC lacks the legal authority to set fees in accordance with the proposed fee schedule, challenging the agency's interpretation of the statutes underpinning NRC's fee collection proposal. These same questions have been raised since the inception of the 100 percent fee collection requirement in 1991. The Commission has consistently interpreted its statutory mandate, but in the face of continuing complaints, the Commission will again address the concerns raised by commenters.

1. Comment. Comments submitted by or on behalf of commercial nuclear power reactors, the uranium recovery industry, and a materials licensee expressed serious concern over inequities caused by the statutory mandate that NRC collect an annual charge from licensees aggregating approximately 100 percent of the budget authority for the fiscal year, less fees collected under Part 170 and any amount appropriated from the Nuclear Waste Fund or the General Treasury. These commenters are particularly distressed at having to

*Treasury<sup>4</sup> - use it throughout. Public might not understand "General Fund"*

"Federal" should be capitalized throughout

directly such as ✓  
F ✓

absorb charges in their annual fees for activities that do not benefit them, including international activities, Agreement State oversight and regulatory support, activities for other federal agencies, and fee reductions or exemptions for small entities and nonprofit educational institutions. One commenter, speaking on behalf of several commercial power reactors, questioned the NRC's legal and constitutional authority to impose these charges. It did not believe the 100 percent budget recovery requirement could be reconciled with the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 (OBRA-90), which requires that annual fees bear a reasonable relationship to the cost of regulatory services and be fairly and equitably allocated among licensees.

conclude  
ought to acknowledge  
the desired

can come only by ✓

Commenters consider that eventual relief for this problem lies in obtaining legislative changes to OBRA-90 to relax the 100 percent budget recovery requirement so that certain costs can be removed from the fee base. They remain hopeful, in spite of awareness that the current Administration does not support such relaxation. In some cases, however, commenters perceive that the NRC has alternatives it is not utilizing, such as charging the other Federal agencies and Agreement States for services provided. In addition, they insist that the NRC should recover these types of costs through General Treasury appropriations from the General Treasury funds appropriated by Congress. In their view, when all else fails, the NRC must simply discontinue the "unfunded" program rather than pass along these costs to the licensees, particularly in today's era of utility deregulation when reactors have reduced ability to pass through costs.

One commenter maintained that the NRC has the authority to charge other Federal agencies Part 170 fees. Another commenter went so far as to say that the NRC is not at liberty to relieve anyone from paying fees for associated services, i.e., to grant exemptions from user

fees, because under OBRA-90, Congress directed NRC to recover its costs by collecting fees from "any person who receives a service or thing of value." This commenter maintained that there was no exemption authority for this requirement. It then relied on the definition of "person" under the Atomic Energy Act to argue, <sup>also</sup> not only that the NRC has authority to impose charges for these types of activities, but that it is compelled to charge the recipients for ~~these~~ <sup>them</sup>.

Thus, it would have the NRC recover Agreement State oversight and support costs through fees assessed on the Agreement States or their licensees. The commenter also stated that costs of international activities should be recovered through fees imposed on the Department of State; <sup>that</sup> Other Federal agency licensing and inspection charges ~~similarly~~ should be assessed against the regulated ~~federal agency~~; <sup>that</sup> Moreover, small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them, <sup>and that</sup> neither a ~~general~~

<sup>Treasury</sup> fund appropriation should be sought to recover those expenses or they should pay their own costs. Other commenters also advocated this approach. ~~which approach?~~

In support of these arguments, commenters charge that OBRA-90 does not permit charges to licensees for programs not directly related to the licensees charged, that the surcharge is unlawful, unfair, arbitrary and discriminatory, <sup>These commenters charge</sup> and that it is unconstitutional in that it denies reactor licensees equal protection under the due process clause of the Constitution and constitutes an unfair taking of property without just compensation. They believe, uniformly, that the surcharge <sup>OBRA-90</sup> bears no relation to services or benefits to the licensees against whom it is assessed and that these costs should be recovered from the beneficiaries. Commenters cite the reduced ability of reactor licensees to pass through costs to their ultimate customers in an era of utility deregulation and reassert their view that power reactor licensees only should be assessed for programs of direct relevance to them.

( <sup>6</sup> which recovers costs that do not directly benefit identifiable ~~licensees~~ NRC licensees )

~~and~~ No bold

Response. OBRA-90 requires that the sum total of annual charges NRC collects from its licensees equal approximately 100 percent of NRC total budget authority for each fiscal year, less fees assessed under the <sup>IOAA</sup> ~~Independent Offices Appropriations Act of 1951, 31 USC 9701 ("IOAA")~~ and amounts appropriated to NRC from the Nuclear Waste Fund. The NRC is expected to establish a schedule of annual charges that fairly and equitably allocates this amount among licensees and reasonably reflects the costs of providing services to licensees or classes of licensees, to the maximum extent practicable (emphasis supplied). This means the NRC annually must promulgate a fee schedule that is as fair and equitable as can be achieved, given the other constraints with which it is faced. The NRC ~~does not have discretion~~ to assess less than this amount, as several commenters suggested, ~~as the difference must be~~ <sup>costs of services that</sup> ~~made up from the licensees, after all other eligible charges are assessed.~~ <sup>do not directly benefit the licensee</sup>

Must ~~be~~

do not directly benefit the licensee

In fact, the Commission concluded in the Statement of Considerations for the 1991 final fee rule that the Congressional intent behind the requirement to collect "approximately 100 percent" of its budget was for the NRC to identify and allocate as close as possible to 100 percent of its budget authority to the various classes of NRC licensees, ~~but not to authorize~~ ~~exclusions from the fee base, insofar as it would set out to recover something less than the full~~ ~~100 percent.~~ The NRC historically has interpreted this requirement as referring to the inherent uncertainties in estimating and collecting fees, such that additional fees would not need to be collected in case of shortfall, nor refunds necessarily made in case of over collection. See 56 Fed. Reg. 31472 (1991).

31473

Moreover, the Conference Report for OBRA-90 specifically acknowledged the fact that there would be certain "expenses that cannot be attributed either to an individual licensee or a class of licensees." The NRC is expected to

fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributable to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

H.R. Conf. Rep. No. 101-964, at 963, reprinted in 1990 U.S.C.C.A.N. 2374. <sup>2668</sup> Thus, Congress has directed that licensees, of necessity, will have to foot the bill for some of the expenses that are not generated by efforts directly on their behalf, regrettable as that may be. While every effort is made to impose such costs equitably, there is one controlling requirement which is inflexible: the NRC must set its schedule so that it can recoup <sup>approximately</sup> 100 percent of its budget authority, less the amounts it properly may recover from other areas, such as charges for services (IOAA fees) and Nuclear Waste Fund Appropriations. ~~Since the inception of the 100 percent budget recovery requirement,~~ In order to meet that mandate, the NRC has been forced to assess fees to licensees to recover the costs of certain types of activities that, while not necessarily benefitting the licensees charged, <sup>directly</sup> leave no other means to be recovered. This includes functions such as <sup>services provided to</sup> ~~work for~~ other Federal agencies, Agreement State oversight and international activities. It is understandable that licensees who absorb the impact of these charges will object to them and wish to be relieved of them, but it overlooks an important qualifier in the standard: namely, "to the maximum extent practicable." That is, when Congress

enacted this admittedly rigorous requirement, it was aware of the fact that there would be certain costs that would not be susceptible to recovery as the others were. It still has not relieved the NRC from the onus of the collection requirement. Certain expenses cannot be attributed to an individual licensee or class of licensees but may be recovered from licensees who can fairly, equitably and practicably contribute to payment.

~~With respect to the specific costs in question,~~ the NRC can readily explain why these costs are spread to agency licensees as part of a fee "surcharge." ~~Briefly,~~ the NRC lacks the legal authority to assess IOAA charges against Federal agencies (other than the Tennessee Valley Authority). The IOAA states, in pertinent part, "[E]ach service or thing of value provided by an agency . . . to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible." A "person on official business of the United States Government" has been construed to mean a Federal agency. This construction indicates that the NRC requires separate Congressional authorization in order to override this provision and lawfully impose fees on other Federal agencies. For example, in light of this language, section 161w. of the Atomic Energy Act was enacted in 1972 to allow the NRC to impose Part 170 fees on the Tennessee Valley Authority. Section 161w. was further amended in 1992 to include the United States Enrichment Corporation, prior to its privatization. Had the NRC's statutory mandate included the authority to impose fees on all Federal agencies, this legislation would have been unnecessary. The NRC submitted to Congress, as a provision in its proposed FY 2000 authorization bill, an amendment to section 161w. which would provide the authority to impose Part 170 fees on all Federal agencies.

The NRC similarly lacks the authority to impose annual fees on the Agreement States and their licensees because OBRA-90 permits the assessment of annual fees only on NRC

I believe it should be granted the authority to charge other Federal agencies for services rendered as recently

licensees. The Agreement States and their licensees are not "NRC licensees." The NRC also *has* made policy decisions *not* to assess fees on non-profit educational institutions in order to further the public good, and to limit the fees assessed on small businesses in accordance with the *policy* Regulatory Flexibility Act. Under the circumstances it can come as no surprise that a substantial portion of these costs are recovered through annual fees imposed on power reactors. A large percentage of the NRC's budget is devoted to the regulation of power reactors and, accordingly, a large portion of the annual fee must be borne by these licensees.

The commenters suggested that, in the absence of such legislation, the NRC should not perform the activities encompassed within the annual fee surcharge. The Commission is not prepared to eliminate many of its important functions that help assure the public health and safety and the common defense and security without a clear statutory directive from the Congress ~~to do so~~. Thus, a legislative solution to the fee recovery requirement is required to eliminate the concerns raised by the commenters. Over the years, the NRC has had limited success in obtaining fee legislation that would reduce the burdens on its licensees by having some or all of NRC expenses in these areas obtained through appropriations from the General Treasury.

*While the Commission continues to support legislative relief,*

*such* Absent legislative relief, the Commission has limited ability to remedy any inequities in its fee structure because it is required to collect approximately 100 percent of its budget in fees. The NRC has taken several actions within existing fee laws to address concerns regarding its fee structure. *It has:*

1. Identified fairness and equity concern categories in <sup>its</sup> the February 1994 Report to Congress on NRC Fee Policy, indicating that legislation was necessary to address these concerns. The recommended legislation <sup>has been</sup> ~~was~~ not enacted. ✓
2. In FY 1995, acted under existing fee laws to help mitigate the fairness and equity concerns by treating costs for these activities <sup>which did not directly</sup> similar to overhead and <sup>beneficial</sup> distributing the costs to the broadest base of NRC licensees; ✓  
NRC licensees ✓
3. Established a policy to obtain reimbursement for services provided to other federal agencies when such reimbursements are authorized by law; ✓
4. Obtained appropriation legislation which removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies; ✓
5. Took actions to shift cost recovery for certain activities from annual fees to specific fees for services; <sup>and</sup> ✓  
Part 100 ✓
6. Is seeking as part of its FY 2000 <sup>✓</sup> authorization bill authorization to assess fees to other Federal agencies for specific licensing and inspection activities performed for those agencies. ]

In sum, the Commission believes that the fee schedules it is promulgating today satisfy all legal requirements and do not deprive any licensee of its constitutional rights.

2. Comment. One commenter said that the basis for annual fees for operating reactors should be megawatt generation capability instead of the proposed fixed flat annual fee. This commenter argued that the proposed fee structure placed a disproportionate burden on the ratepayers of utilities with small reactors and resulted in a competitive disadvantage to those reactors.

Response. OBRA-90 requires that annual fees have a reasonable relationship to the expenditure of Commission resources. No available data demonstrates that the Commission expends fewer resources on reactors with lower generation capacity than it does on facilities with greater generation capability. Furthermore, Commission services are not allocated on the basis of megawatt generation capability. Because there is no relationship between generic costs and generation capacity, there is no legal basis for charging annual fees based on megawatt generation capability. ✓

3. Comment. One commenter said that the NRC should designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The NRC should then refund the higher fees collected for the last two years from all 8(a) firms. The commenter further requested that the NRC change its definition of small entity for Environmental Remediation Service companies to conform to the SBA's revised size standards, which now categorize such companies with fewer than 500 employees as "small entities." ✓

Response. On April 11, 1995, the NRC promulgated a final rule after notice and comment rulemaking that established the small entity classification for those companies providing services having no more than \$5 million in average annual gross revenues over its last three completed fiscal years, or, for manufacturing concerns, an average of 500 employees during the preceding 12-month period. 10 CFR 2.810. The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. The NRC rule, which the SBA approved, established a generic size standard for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry. Unlike the NRC, the SBA's Standard Industrial Classification System (SIC) establishes size standards based on types of economic activity or industry. Seven months after the NRC amended its size standards through notice and comment rulemaking, the SBA published amendments to its own SIC code standards. Among other things, these amendments added SIC Code 8744, Environmental Remediation Services.

The Commission is currently considering the issue raised by this commenter regarding its designation of small entities for reduced fee purposes. However, because section 3(a)(2) of the Small Business Act requires that size standards be promulgated through notice and comment rulemaking, the NRC cannot amend its size standards to conform to those of the SBA in this rulemaking. Simply put, the NRC would first need to develop a proposal and solicit public comment on it before making a decision to amend its size standards. In the meantime, however, individual licensees affected by the SBA's revised size standard may file for a partial

exemption from fees pursuant to 10 CFR 171.11. The NRC will separately address the commenter's request for a partial annual fee exemption.

4. Comment. A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1999. One commenter stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived ~~at its final determination of the annual fees.~~ <sup>at its proposed fee schedules</sup> ✓

Response. The NRC believes it has provided sufficient information concerning its proposed fee schedule to allow effective evaluation and constructive comment on the proposed rule. In Part II of the Statement of Consideration<sup>S</sup> supporting the proposed rule, the NRC ✓ provided a detailed explanation of the FY 1999 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC work~~papers~~<sup>#</sup> pertinent to the development ✓ of the fees to be assessed were placed in the Public Document Room (PDR) on April 1, 1999, the first day of the public comment period. The work~~papers~~<sup>#</sup> provide additional information ✓ concerning the development and calculation of the fees, including NRC's FY 1999 budgeted resources at the subactivity level for the agency's major programs. The NRC has also made available in the PDR NUREG 1100, Vol.14, "Budget Estimates for Fiscal Year 1999" (Feb. ✓ 1998), which discusses in detail NRC's budget for FY 1999. In addition, NRC staff always makes itself available either to meet with interested parties in person, or respond to telephone inquiries to explain its fee schedules.

B. Specific Comments - Part 170.

1. Expand the scope of Part 170.

Be consistent  
w/ capitalization  
of "PM"

Comment. The NRC received twelve comments on the proposal to expand the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals, and full cost recovery for time expended by Project Managers (PMs), except leave time and time spent on generic activities such as rulemaking. ✓ ✓

Many of those commenting on this issue opposed full cost recovery for ~~Project~~ <sup>PMs.</sup> ✓ ✓

~~Managers.~~ Several uranium recovery licensees commented that coupled with the proposed increase in the hourly rate to be assessed for NRC staff review time, the proposed change could double Part 170 fee assessments, an increase that would be extremely burdensome to licensees. One commenter indicated that billing for all of a PM's time would reduce necessary communication, such as phone calls, between the NRC and the licensees. This commenter also objected to licensees being required to pay for the time a PM spends to become familiar with a site. A similar comment was received from a reactor licensee who, although not specifically indicating opposition to the proposal, stated that Part 170 fees should not be assessed for PM or resident inspector time spent in training or other administrative tasks not directly associated with the licensee. One commenter indicated that the licensees paying for the PM time <sup>have</sup> ~~has~~ little or no input over what the PM is reviewing. A power reactor commenter supported full cost recovery for PMs only if work priorities were mutually agreed upon by NRC and the licensee. ✓

Several of the uranium recovery commenters also questioned the amount of time spent by Project Managers and staff in reviewing licensee submittals, indicating that in many cases they believe the amount of time spent on uranium recovery issues is excessive in light of what they characterize as the low level of risk posed by uranium recovery operations. One uranium recovery commenter stated that the proposal presents the potential for an open-ended escalation of fees that do not directly benefit the licensees.

Other commenters partially or fully supported the proposed expansion of Part 170. The Nuclear Energy Institute (NEI), which primarily represents the commercial nuclear reactor industry, urged the NRC to continue to separate out fees related to a given licensee and assess those fees to the licensee under Part 170. NEI stated that it is inappropriate for one licensee to subsidize through annual fees additional agency oversight incurred by another licensee because it is not performing well. Another commenter who supported the proposal recommended that NRC demonstrate how the expanded Part 170 costs are removed from the Part 171 fee schedule. One power reactor commenter agreed in part with shifting cost recovery from annual fees to fees for services; however, the commenter stated that as more services are billed by the hour, the opportunity for inefficiencies in reviews and billing abuse becomes greater. This commenter suggested that hourly fees be capped to allow licensees to make budget forecasts.

Another commenter supported the assessment of Part 170 fees for all inspections, stating that the change is expected to lower the costs of inspections for good performers. This commenter opposed (However) the proposal to expand Part 170 to include reviews of documents that do not require formal approval. This commenter stated that these documents

commenter  
either name  
the commenters  
or don't

are submitted in compliance with regulations without an expectation of NRC assistance in assuring compliance, and licensees should have control over Part 170 charges.

A materials licensee questioned how the proposed additional Part 170 fees would be billed, indicating that if NRC has truly downsized, the expanded scope of Part 170 is not justified.

Response. The NRC is expanding the scope of Part 170 to include incident investigations, performance assessments and evaluations (except those for which the licensee volunteers at NRC's request and which NRC accepts), reviews of reports and other submittals such as responses to Confirmatory Action Letters, and full cost recovery for Project Manager time, except leave time and time spent on generic activities such as rulemaking. Expanding the scope of Part 170 is consistent with Title V of the IOAA, interpretations of that legislation by the federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. These special benefits include services rendered at the request of a recipient and all services necessary to the issuance of a required permit, license, certificate, approval, or amendment, or other services necessary to assist a recipient in complying with statutory obligations under the Commission's regulations. Incident investigations, performance assessments and evaluations, reviews of reports and other documents, and PM activities are services which the NRC provides to specific, identifiable recipients. Thus, it is more appropriate that the costs of these activities be recovered through Part 170 fees assessed to the recipient of the service rather than through annual fees assessed to all of the licensees in the class.

Based on the requirement of OBRA-90 that the NRC recover approximately 100 percent of its budget authority through fees, the costs of these services must be paid either by applicants and licensees under Part 170 as fees for services rendered to them, or by licensees under Part 171 as annual fees. To calculate the total amount to be assessed in Part 171 annual fees, the estimated amount to be recovered through Part 170 fees in a given fiscal year is subtracted from the total budget authority for that fiscal year. Therefore, if all other things remain equal, increasing the costs to be recovered under Part 170 would shift costs away from Part 171 annual fees. Although this change may result in increased Part 170 fees assessed to the individual licensees receiving the specific services, the overall fee burden for licensees in that fee class is not increased. It should be noted that because this final rule will become effective after the last quarterly Part 170 billing in FY 1999, the changes will not have an effect on the estimated Part 170 collections for FY 1999 and thus do not affect ~~the amounts of the~~ FY 1999 annual fees. ✓

As described in the proposed rule, this change will result in the assessment of Part 170 fees to individual licensees to recover the full costs for PMs assigned to their sites, except PM activities that are of a generic nature, such as rulemaking and preparation of generic guidance documents, and leave time. In those cases where a PM is assigned multiple sites, the PM's ✓ time that is not site-specific ~~site~~ will be prorated to all of the sites to which he or she is assigned. ✓

The NRC acknowledges some commenters' concerns about individual licensees being charged for the time a PM is in training or performing administrative tasks, and time for a newly-appointed PM to become familiar with a particular site. These types of activities, however, are necessary in order for the PMs to effectively provide oversight for the operation of an assigned site or sites. Therefore, the cost of these activities should be borne by those licensees requiring

PM services, whether the services are specific licensing and inspection actions, or other duties associated with serving as the agency focal point for oversight of a site or sites. Examples of PM activities that will be billed to the specific site or sites <sup>under Part 170</sup> ~~are~~ <sup>include:</sup> discussions with NRC regional employees on specific plant issues, visits to the site(s), scheduling, planning and coordinating work with the technical staff, and answering technical questions. Time spent by PMs in reviewing licensee submittals, participating in performance assessments, evaluations, and incident investigations, and conducting inspections <sup>(also)</sup> will be billed to those specific activities and ~~the remainder of the PM time subject to Part 170 cost recovery will be billed as PM activities.~~ PM time not subject to Part 170 cost recovery will be recovered through Part 171 annual fees.

The NRC disagrees with the suggestion that PM time should be billed only if the work priorities are mutually agreed upon by NRC and the licensee. It would be inappropriate to have entities regulated by the NRC <sup>concern in</sup> ~~make recommendations on~~ how the agency carries out its regulatory functions related to that specific entity. The agency's work priorities, including those of PMs, are carefully reviewed by <sup>NRC</sup> management to assure that the appropriate resources are spent to accomplish the agency's health and safety mission. Assessing Part 170 fees to recover the cost of a particular service provided to an individual applicant or licensee does not diminish the requirement for NRC management to carefully balance workload and assigned resources in an efficient and effective manner. This also applies to the suggestions that staff spends excessive time on reviews, and that increasing the scope of Part 170 as proposed would open the door for inefficiencies in reviews and billing abuses. The NRC is committed to performing all of its activities as expeditiously and efficiently as possible. This commitment is evidenced by the streamlining and downsizing the agency has accomplished, and the resulting budget reductions. In addition, billing for activities under Part 170 provides licensees a greater

opportunity to review and challenge specific costs because the charges are individually itemized on the Part 170 bills.

Part 170 fees for these additional activities will be applicable only to those applicants and licensees subject to full cost billing under Part 170. Those materials licensees who hold licenses for which amendment and inspection fees have been eliminated from Part 170 will not be subject to Part 170 fees for these additional activities.

2. Including Orders and Escalated Enforcement Actions in Part 170 in FY 2000.

Comment. The NRC solicited public comment on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in next year's proposed fee rule. Four comments were received on this issue. Two commenters opposed adding these activities to Part 170 and one commenter supported their inclusion. The fourth commenter indicated that the direct allocation of these costs to those who receive the services warrants further evaluation, and it would welcome the opportunity to comment on a definitive proposal in the FY 2000 fee rule. This commenter stated that, in addition to being viewed as a penalty upon licensees who exercise their rights to challenge the NRC action, there are additional implications in situations where the licensee is successful in such a challenge.

*One of these*  
~~Another commenter~~ stated that the assessment of Part 170 fees for these actions would result in a "de facto additional civil penalty, and further challenge the economics of operation for that facility." NEI, on the other hand, urged the NRC to continue to assess fees under Part 170 for

*One of the  
four commenters  
this is confusing*

*Again, do you want  
to name commenters?*

20

of OBRA-90, the NRC should work with Congress to make the fee system more equitable. One commenter suggested that support staff be reduced parallel with FTE reductions and questioned whether materials program support staff could be shared with other programs to lessen what the commenter termed the "support imbalance and consequent licensee load."

*fee schedule*

*NO*  
*in developing the*

Response. As stated in the proposed rule, due to a coding error that occurred in FY 1998, the FY 1999 hourly rates are more appropriately compared to the FY 1997 hourly rates plus salary and benefit increases since that time. The FY 1997 hourly rate for the reactor program was \$131, and the FY 1997 hourly rate for the nuclear materials and nuclear waste program was \$125. The NRC salaries and benefits increased 4.4 percent from FY 1997 to FY 1998, and 3.68 percent from FY 1998 to FY 1999. Considering only these increases, the FY 1999 hourly rates would be \$142 for the reactor program and \$136 for the materials program. In addition, however, there has been a shift in the proportion of direct resources from the reactor program to the materials program. As a result, the materials program now has a larger share of the direct resources and consequently must absorb more of the overhead and management and support costs. The professional hourly rates are based on budgeted costs. Because overhead resources are budgeted separately for the materials and reactor programs, they cannot be "shared" for purposes of the hourly rate calculations as suggested by one commenter. Agency management and support costs, on the other hand, are not budgeted separately for the reactor and materials programs. Instead, these costs are allocated to the programs based on their share of the budgeted direct resources. Because the materials program now has a larger share of the direct resources than in the past, more of the management and support costs have been allocated to the materials program.

As indicated in previous final rules, the NRC professional hourly rates must be established at levels to meet the statutory requirement of OBRA-90 to recover through fees approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund. The NRC is not able to use inflation or other indices in the development of the hourly rates charged under 10 CFR 170 and 171 because these factors may not allow the NRC to meet the 100 percent fee recovery requirement.

Given the budgeted costs that must be recovered through the hourly rates, it is necessary to increase the FY 1999 hourly rates to \$141 for the reactor program and \$140 for the materials program. The method and budgeted costs used in the calculation of the hourly rates are discussed in Section III of this final rule. In addition, the agency work<sup>#</sup>papers supporting each proposed and final rule include details of the hourly rate calculations. These work<sup>#</sup>papers also contain details of the agency's budget used in the development of the FY 1999 hourly rates and fees. As ~~previously~~ <sup>earlier</sup> stated, the work<sup>#</sup>papers supporting the fee rules are available for inspection in the NRC Public Document Room, ~~2120 L Street, NW (Lower Level), Washington DC 20555-004.~~ The specific details regarding the NRC's FY 1999 budget are documented in the NRC's publication <sup>NUREG-1100, Vol. 14, Budget Estimates... (Feb. 1998).</sup> ~~[NUREG-1100, Vol. 14 (Feb. 1998)] "Budget Estimates, Fiscal Year 1999".~~ Copies of NUREG-1100 may be purchased from the Superintendent of Documents, U. S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328, and from the National Technical Information Service, Springfield, VA 22161-0002. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room.

##### 5. Fee Adjustments.

Comment. Five comments were received on the proposed fee adjustments to the fee schedules for specific classes of licensees set forth in §§170.21 and 170.31. NEI specifically commented on the NRC's proposal to revise §§170.21 and 170.31 to reflect the increased hourly rates and the results of the biennial review of Part 170 fees required by the Chief Financial Officers (CFO) Act. NEI questioned the statement in the proposed rule that the average number of professional hours required to conduct inspections and to review and approve new license applications increased for 20 of 33 fee categories. NEI stated that license applications have become more uniform and inspection frequency is expected to decline as a result of implementation of the NRC's new risk-informed, performance-based regulatory philosophy. Four other commenters expressed opposition to the increased fees for materials licensees, which include increases in Part 170 fees for certain categories. These commenters indicated that the proposed changes would have adverse effects on licensees. A manufacturer of portable density and moisture testing gauges stated that economic hardship on licensees will lead to the sale and disposal or abandonment of gauges and subsequent license termination. The commenter stated that use of a valuable tool will be diminished <sup>do a result of the fee increases</sup> and referred to the low <sup>the fee increases,</sup> cost of regulating this category of radioactive materials devices, the low activity of material in the devices, and the safety record of these devices. Other commenters indicated that the increases were unjustified, pointing to the safety record of devices covered by fee category 3P (all other byproduct material), and the time span between inspections for these types of licenses. <sup>One</sup> ~~Another~~ commenter stated that in light of NRC's efforts to streamline its licensing, inspection and enforcement programs, costs should be reduced commensurate with a reduction in resources and activity.

Response. The results of the biennial review of fees were based on actual staff hours reported for the various license categories over a 5-year period. During the 5-year period, almost 700 new license applications and almost 4000 amendment requests were processed for fee Category 3P, <sup>a</sup> "All other byproduct material", ~~and~~ <sup>other</sup> approximately 2300 inspections were conducted. Similar numbers of actions were reported for nuclear medicine licenses. Although fewer actions were reported for certain other categories, the volume of data is sufficient to support the increases in the average time spent on these <sup>other</sup> categories. Based on the volume analyzed in the biennial review, the NRC has no basis to modify the average time results for processing these applications and inspections. Fee category 3P ~~covers~~ <sup>#</sup> covers all types of byproduct material licenses that are not specifically identified in another fee category. For example, in addition to gauge licenses, fee category 3P includes licenses for in-vitro studies, instrument calibration and leak testing services, and possession only. Thus, the average time for licenses in fee Category 3P is based on the average time for all of these types of licenses, not just gauge licenses. Although the time reported for all fee categories over the 5-year period was analyzed, in certain fee categories there were very few licensing actions completed during this time. [In those cases where there were few licensing actions completed, any fee increases were limited to plus or minus 50 percent.] The NRC is streamlining its licensing and inspection efforts, and is working on a series of guidance documents related to about 20 categories of materials licenses. Because these initiatives are still under development, the full efficiencies have yet to be realized. Based on the requirement for NRC to recover approximately 100 percent of its budget authority through fees each fiscal year and the requirement to biennially review and revise charges to recover the costs of providing the services, the NRC is unable to establish fees based on ~~changes~~ <sup>cost reductions</sup> that may occur in future fiscal years. Part 170 fees must approximate current costs. The NRC is adopting the results of the biennial review in this final

*deleted*

*? clarify*

*skw  
as this  
sufficient  
explanation?  
add  
explanation  
based on  
what??*

*oh*

efforts, it also has the potential to reintroduce into the fee process an instability that the percentage change method was created to address. USEC referred to the methodology for stabilizing fees described by the NRC in the FY 1996 fee rule, stating that consistent and appropriate application of that methodology should result in rebaselining when warranted, but not necessarily annually. USEC stated that the methodology will result in a fair allocation of fees while maintaining some stabilization and fee predictability.

Response. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years as warranted. The current policy of adjusting the annual fees only by the percent change in NRC's total budget unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees provides for fee stabilization, a continuing issue of concern for licensees as evidenced by the comments received. The commenters did not provide overwhelming support for reversing the current policy. Therefore the Commission is continuing the policy as described in the ~~Statements of Considerations~~ <sup>S/C</sup> for the FY 1995 final fee rule ~~(FR)~~ <sup>R</sup> to stabilize fees by adjusting the annual fees only by the percent change in NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished <sup>see 60 Fed Reg 32225 (1995).</sup> The Commission stated in the FY 1995 rule that the percent change method would be used for a maximum of four years. The criteria has been successfully applied for the last ~~four~~ <sup>three</sup> fiscal years. As a result <sup>annual fees for</sup> FYs 1996, 1997 and 1998 ~~annual~~ <sup>fees</sup> were established based on the percent change in the budget. The Commission determined that <sup>it is</sup> ~~is~~ appropriate to establish new baseline fees for FY 1999 based on the

program changes that have taken place since FY 1995, the addition of a new fee class for spent fuel storage/reactor decommissioning, and the fee policy changes since FY 1995. Based on the experience gained as a result of applying the criteria for rebaselining over the past four years, the Commission has determined that annual fees should be rebaselined every three years, or earlier if warranted. The decision on the appropriate method for establishing annual fees for the intervening two years will be made ~~during the annual fee rulemaking process~~ <sup>in the future</sup> ~~each year~~.

3. Spent fuel storage/reactor decommissioning annual fee.

Comment. Four comments were received on NRC's proposal to establish a spent fuel/storage decommissioning annual fee to be assessed to all reactor licensees, regardless of their operating status, and to Part 72 licensees who do not hold a Part 50 license. Duke supported the proposed change, stating that the current fee regulation would impose duplicative fees on licensees for use of a Part 72 general license if they already perform the same activities under a specific Part 72 license. Duke contends that imposition of such substantial and duplicative fees is inconsistent with Congress' direction in the Nuclear Waste Policy Act of 1982, as amended, that NRC eliminate, to the maximum extent practicable, the need for specific NRC authorization for onsite storage of spent fuel. Duke stated that the duplicate annual fees for both types of licenses would deny licensees the reasonable opportunity to use the general licenses, and supports the removal of such disincentive by revising the fee regulations as proposed. One reactor licensee objected to the proposed fee because it does not maintain an Independent Spent Fuel Storage Facility (ISFSF), has adequate storage capacity in its Spent Fuel Pool (SFP), and does not plan to build an ISFSF for at least 15 years. The commenter stated that under the proposal it would pay fees for

~~0024~~

continuing to store spent fuel in the SFP until an ISFSF is needed, but would not realize services or benefits for those fees. The commenter stated it is not appropriate for its customers to pay the ISFSF fees of other licensees, and had DOE honored its obligation to take possession of spent fuel by January, 1998, the fee would not be an issue. Two other commenters, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel <sup>onsite</sup> ~~(on-site)~~. These commenters argued that because they have no fuel <sup>onsite</sup> ~~on-site~~ they derive no benefit from NRC activities related to spent fuel storage. GE Nuclear stated that its Vallecitos Boiling Water Reactor (VBWR) derives no comparable benefit from the NRC's decommissioning activities because essentially all of the facilities, structures, and systems, external to the containment vessel associated with VBWR operations have been removed, leaving a very small containment structure and internal components subject to future decommissioning. PECO Energy Company (PECO) stated that the Peach Bottom Atomic Power Station Unit 1 (PBAPS) fuel pool has been drained and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in a SAFSTOR status ~~with~~ <sup>to</sup> ~~the only activity being performance of~~ <sup>performed onsite is</sup> required Technical Specifications Surveillance Requirements through December 2015.

Be consistent w/ spelling

singling out commenters

Response.

The NRC is establishing in this final rule a spent fuel storage/reactor decommissioning annual fee; however, the new annual fee will not be assessed to those reactors that have permanently ceased operations and have no spent fuel <sup>onsite</sup> ~~(on-site)~~. The NRC agrees with commenters that NRC's generic spent fuel storage activities do not relate to reactors that have ceased operations and have removed all fuel from the site. The new fee will be assessed, however, to all reactors who have fuel <sup>onsite</sup> ~~(on-site)~~ regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store

spent fuel until a permanent offsite storage facility becomes available. The fact that DOE has not taken possession of the spent fuel does not relieve NRC of the OBRA-90 requirement to recover approximately 100 percent of <sup>its</sup> the budget ~~activity~~ <sup>staff</sup> through fees, including those costs associated with generic spent fuel storage activities. The NRC believes that assessing a spent fuel storage/reactor decommissioning annual fee to all reactor licensees who have spent fuel <sup>onsite</sup> on-site and all Part 72 licensees who do not hold a Part 50 license is a reasonable approach for recovering NRC costs for generic spent fuel storage and reactor decommissioning activities. As stated in the <sup>Statement of Considerations for</sup> proposed rule, the current policy has raised concerns that the fee structure could create a disincentive for licensees to pursue dry storage. The spent fuel storage/reactor decommissioning annual fee will give equivalent fee treatment to both storage options. The annual fee will also address concerns about the fairness of assessing multiple annual fees if a licensee holds multiple Part 72 licenses for different designs, and will result in most reactor licensees being assessed the costs of NRC's generic reactor decommissioning activities. This annual fee includes the costs of NRC's generic and other research activities directly related to reactor decommissioning and spent fuel storage (both storage options), and other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except those activities which are subject Part 170 fees. The final FY 1999 spent fuel storage/reactor decommissioning annual fee is \$205,000. This reflects that an annual <sup>fee</sup> will not be imposed on those six reactors which have permanently ceased operations and have no fuel <sup>onsite</sup> (on-site). This also takes into account the prorated FY 1999 annual fee to be assessed to DOE for the Part 72 license issued on March 19, 1999 for the storage of fuel and fuel debris resulting from the Three Mile Island Unit 2 accident.

4. Revised Fuel Cycle Matrix.

Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDPs), requested that the NRC revise the fee rule to recognize that the GDPs are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment ~~against~~ <sup>on</sup> the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor <sup>Rating</sup> ~~Rating~~ in the fuel facility matrix used by NRC to assess relative effort for a facility. Specifically, USEC took issue with NRC's matrix evaluation of the relative weight and hence, NRC's regulatory effort for GDP activities. USEC stated that NRC counted the risk for UF6 twice, once as solid and once as liquid. USEC argues that the risk is less, and that the Effort Factor for UF6 should be reduced from 10 to 5 for the GDPs.

Response. The NRC has rejected previous requests from USEC that a single fee be assessed for the two GDPs. For the reasons stated in response to USEC's comments on the proposed FYs 1997 and 1998 fee rules (62 FR 29197 and 63 FR 31843), and in NRC's March 23, 1998, denial of USEC's annual fee exemption request, the NRC believes that USEC must pay a full annual fee for each of its enrichment facilities. USEC has recently appealed the FY 1998 annual fee assessments for the two GDPs. Because USEC raised these same specific issues in <sup>its</sup> ~~their~~ current exemption request, we will address those issues in our <sup>forthcoming</sup> ~~response~~ to the exemption request. In the fuel facility matrix, the NRC assessed the risk based on the total relative amounts of UF6. The amount of both liquid and solid UF6 merits weighting the value as 10 for the GDPs <sup>se</sup> when compared to other fuel cycle facilities.

D. Other Comments.

1. Inconsistency in Hourly Rate and Annual Fee Calculation Tables.

Comment. One commenter stated that there is an inconsistency in the proposed rule between the table showing the calculation of the professional hourly rates and the table showing the amount to be recovered through annual fees. Specifically, the commenter stated that Table I, "Budget and Fee Recovery Amounts for FY 1999", indicates that \$103.5 million is expected to be recovered through Part 170 fees in FY 1999, while Table II, "FY 1999 Budget Authority to be Included in Hourly Rates" indicates that \$257.4 million is to be recovered through Part 170 fees in FY 1999.

Response. The amounts shown in Tables I and II are correct. In the proposed rule, Table I, "Budget and Fee Recovery Amounts for FY 1999", shows the estimated amounts for recovery under Parts 170 and 171 for FY 1999. The total budget included in the hourly rates as shown in the proposed rule, Table II, "FY 1999 Budget Authority to be Included in Hourly Rates" is to be recovered through both Part 170 fees and Part 171 fees. Because the professional hourly rates are established for both Part 170 and Part 171 cost recovery purposes, the amount of the budget authority included in the hourly rate calculations differs from the estimated amount to be recovered solely through Part 170 fees.

*Don't understand at all*

*totals \$103.5 million on Table II, the \$257.4 million*

*million is the direct cost of records requests program (not including contract costs)*

2. Adverse Effects of Fee Increases.

Comment. Many commenters opposed the fee increases in general, indicating that the increases are not justified and would have adverse economic impacts on NRC licensees. Several commenters expressed concerns that with the decline in the number of

*It is not intended to convey the amount of annual fee to be collected*

*This sum is recovered through the imposition of fees under Part 170 and 171.*

would ~~will~~ be?  
licensees, the remaining licensees ~~are~~ required to pay a greater share of NRC's costs, with no increase in benefits. Some commenters stated that NRC's budget should be reduced consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that ~~there should be lower~~ NRC costs, <sup>should lessen</sup> translating to lower fees, as the agency moves towards a performance-based regulatory structure. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, <sup>including:</sup> ~~such as~~ NRC's revised oversight process, <sup>to set</sup> which should result in decreased inspection hours; a declining number of industry events, that should lead to fewer ~~inspections~~ <sup>were reduced</sup> inspections, and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that NRC consider additional changes to its organizational structure, such as eliminating the <sup>regional offices</sup> ~~regions~~, and <sup>reducing</sup> ~~reduce~~ the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the minimum resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations; however, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs

for each class of licensee. The NRC recognizes that there will be adverse economic impacts on those classes of licensees with fee increases for FY 1999. However, as the NRC has stated in response to similar comments received on previous fee rules, because OBRA-90, as amended, requires the NRC to recover approximately 100 percent of its budget authority through fees, the NRC cannot mitigate the adverse economic impacts by eliminating or reducing the fee increases for one class of licensee without increasing the fees, and thus creating adverse economic impacts, for another class of licensees. Therefore the NRC has considered only the impacts it is required to consider by law. As required by the Regulatory Flexibility Act of 1980, the NRC has considered the impact of its fee regulations on small entities, and evaluated alternatives to minimize those impacts. This evaluation is included in the Regulatory Flexibility Analysis <sup>(Appendix A)</sup> ~~which is Appendix A to this final rule.~~ As a result of this analysis, the NRC is continuing the maximum annual fee of \$1,800 established in FY 1991 for certain small entities, and the lower-tier small entity fee of \$400 established in FY 1992 for small entities with relatively low gross annual receipts and for manufacturing concerns with relatively few employees. As explained in the proposed rule, the rebaselined FY 1999 annual fees reflect program changes that have occurred since the last rebaselining in FY 1995. These changes include the NRC's successful downsizing and streamlining efforts. The NRC's budget to be recovered through fees has decreased from approximately \$504.0 million in FY 1995 to approximately \$449.6 million in FY 1999, a reduction of more than 10 percent. In constant 1993 dollars, the NRC's budget has decreased by \$127.5 million, or approximately 24 percent, since FY 1993, as shown in the following table:

Fiscal Year (FY)	1993	1994	1995	1996	1997	1998	1999
Budget (\$ millions)	540.0	522.4	498.7	439.7	434.1	427.0	412.5
Difference from FY1993 (\$ millions)		17.6	41.3	100.3	105.9	113.0	127.5

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999 annual fees for materials licenses subject to "flat" Part 170 fees also reflect the results of the biennial review of fees as required by the ~~Chief Financial Officer's Act~~ <sup>CFO</sup> ~~and~~ <sup>as well as</sup> the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees; however, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections. Although fewer resources may be needed to complete licensing reviews and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licensees in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class. The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding <sup>reductions needed in</sup> future NRC budgets are not

g  
being addressed in this final rule. The NRC is establishing the rebaselined FY 1999 annual fees at the levels necessary to recover the budgeted costs for each class of licensee from that class to the extent practicable, and to recover the surcharge costs from all classes of licensees based on their share of the budget. ✓✓

## 2. Uranium Recovery Issues.

Comment. Several comments relating to specific uranium recovery issues were received from uranium recovery licensees and their representatives. The commenters claimed that the uranium recovery industry has been targeted for especially large fee increases and gave several reasons why they believe their treatment under the proposed rule is especially harsh and unfair. The commenters stated that the increases in hourly rates and license fees place an undue burden on the uranium recovery industry, which is suffering from a depressed market. The commenters argued that they cannot "pass through" such costs, and the fee increases directly affect the profitability and viability of an operation. The commenters also indicated that the imposition of such high fees and hourly rates on the uranium recovery industry discourages current uranium production and discourages companies from maintaining facilities in a standby status until market conditions improve. This, commenters claimed, is against the national interest of preserving <sup>the</sup> domestic energy production infrastructure. ✓✓

Commenters stated that NRC efforts to promote performance-based licenses for uranium recovery licensees should result in lower, not higher, license fees for the uranium recovery class. Commenters pointed to areas where they believe NRC engages in excessive regulatory oversight of the uranium recovery licensees: conducting two inspections each year of uranium in-situ leach <sup>(ISL)</sup> operations, compared to the one inspection conducted per year prior to NRC's ✓✓

closure of the Uranium Recovery Field Office, and requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments. The commenters also questioned the need for increased NRC efforts related to ground water concerns for in-situ facilities <sup>as they argued that</sup> when it is questionable <sup>N/A</sup> if NRC should be regulating in-situ leach wellfields and associated ground water concerns. <sup>addressing</sup> <sup>N</sup> ?

Response. The NRC does not select, or "target", any class of licensees for fee <sup>reductions</sup> increases or ~~decreases~~. Instead, rebaselined annual fees are established to recover the budgeted costs of NRC's regulatory programs for each class of licensee, plus a percentage of the surcharge costs allocated to that class based on their share of the budget. The NRC has addressed similar comments in previous fee rules concerning the market condition of the uranium recovery industry and the national interest of preserving <sup>the</sup> energy production <sup>✓</sup> infrastructure. The Commission continues to conclude that it cannot set fees based on passthrough considerations. As stated in response to comments on this issue in the FY 1993 fee rule (58 FR 38667), the Commission lacks the expertise or information needed to determine whether in a market economy particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is ~~not a~~ financial regulatory agency, and does not have the resources necessary to continuously evaluate purely business factors. <sup>✓</sup> The NRC is sensitive to licensee's concerns on the passthrough issue; however, the annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA-90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status.

The NRC has examined ways to reduce or eliminate inspections. In establishing inspection frequencies, the NRC considers the risk to public health and safety and the environment. Sites under reclamation are to be inspected once every three years, unless a specific request is received from a licensee for the staff to review elements of construction. Sites on standby status are to be inspected every two to three years. Facilities that are currently in operational status are to be inspected twice a year, with the option for a reduction to once a year, depending on the inspection record. If an operating uranium recovery licensee has a good inspection record and the inspector sees justification for eliminating the second inspection, we will do so.

*ok*  
*ND*  
*a reduced number of inspections is therefore warranted. ~~the~~ will eliminate one annual inspection.*

The NRC agrees that performance-based licensing should result in reduced Part 170 fees for uranium recovery licensees. Under a performance-based license, a licensee is allowed flexibility to make certain changes at the site without the need for a license amendment. This streamlined form of <sup>regulation</sup> license, when implemented properly by the licensee, should result in less hours spent on staff reviews of licensee submittals.

*Need a transition*  
*another area where reduced regulatory effort may be*  
*both covering portions to erosion*  
*protected*  
Experience has shown that erosion protection is an area where impacts to the

*check accuracy*

impoundment are greater. To provide additional guidance for the licensees in this and other technical areas, the NRC developed a Standard Review Plan for Reclamation of Title II Sites and an erosion report that discusses acceptable design methods and analyses for erosion control. These two documents were released for public comment in February 1999. The staff is reviewing and will be responding to the comments received. The final versions of these documents should provide more clearly the types of design methods and analyses that would serve as acceptable bases for the NRC's staff's conclusions about the stability of the site.

*To assist the NRC in this endeavor,*

*spell out*

*(ISL)*

In late 1997 the NRC began examining its role in the regulation of in-situ leach wellfields and the associated groundwater. In addition, in April 1998, the NMA provided the Commission with a White Paper in which it ~~cited~~ *discussed* four major concerns related to NRC regulation of the uranium industry. Based on the NRC staff's and NMA's concerns, the staff prepared a paper *which is now before the* ~~for the Commission's~~ *which outlines options for NRC regulation of groundwater and wastes at ISL facilities. The Commission's decision will* ~~shape~~ *shape* NRC's *future regulatory program in the* ~~impacted by the Commission's decision on which option is acceptable.~~ *area.*

4. NRC'S fee billing systems and practices.

Comment. Two commenters requested that NRC modify its billing systems and practices. NEI requested that NRC allocate the costs of services to individual units at multi-unit sites. NEI complained that under current practice the agency "arbitrarily" allocates site-wide inspection fees to one unit. NEI stated that due to varying ownership percentages in each unit, it is critically important in a competitive environment for site-wide fees to be allocated to the individual units. The NMA requested that NRC continue its efforts to provide bills that contain more meaningful descriptions of the work done. The NMA stated that in the private sector, adequate explanations are provided for clients to fully understand what was done, when it was done, and how much time was spent on each discreet activity. The NMA indicated that such a system could help identify problems, such as excessive time spent on reviews of licensee submittals.

Response. Effective with the FY 1998 fee rule (August 10, 1998), the NRC is assessing Part 170 fees to recover all of the resident inspector's time, except leave time and time spent in

support of another facility. For resident inspectors, all non-inspection time is charged to the docket to which they are assigned. A senior resident inspector, however, may be assigned to the site rather than to a specific unit at a multi-unit site. In these cases, the senior resident inspector's non-inspection time is currently billed to the lowest docket number for the site. Due to billing system limitations, we are not able at this time to provide separate billings for each unit for the non-inspection senior resident inspector time. We will pursue modification of our billing system in the future to allocate this senior resident time to each docket on a prorated basis, e.g., if there are three dockets and one senior resident inspector at the site, each docket will be billed for one-third of the senior resident inspectors' time that is not related to a specific inspection.

Can we provide more information on this? Will we?

✓  
✓

~~will respect to the request for more detailed~~

The NRC converted to a new billing format in October 1998 for materials licensing actions subject to full cost recovery. ~~These~~ <sup>under those</sup> Part 170 bills now provide more detailed information on the charges to support the licensing costs. In addition, ~~a~~ <sup>supporting</sup> document is included with these bills which provides information on the date of the application, the control number for the application, the name of the NRC reviewer and/or contractor, the number of regular and non-regular hours expended by the reviewer, and the NRC reviewer's title. In the very near future, the NRC will convert to a new inspection fee billing system for materials licensees that will provide more detailed information for inspections.

information regarding by the materials licensee

Now when?

review

### III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1999 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For

OK

FY 1999, the NRC's budget authority is \$469.8 million, of which \$17.0 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 1999 Appropriations Act states that this \$3.2 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately \$449.6 million in FY 1999 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 1999 is \$5.2 million less than the amount estimated for recovery in the NRC's FY 1998 fee rule.

The reduced budgeted costs to be recovered through fees for FY 1999 reflect several actions taken by the NRC. These actions include strategic planning, downsizing, and a more aggressive policy on seeking reimbursement for performing services that are not a required part of the agency's statutory mission. For example, for FY 1999, the NRC entered into an agreement with the U.S. Agency for International Development to fund NRC's staff costs associated with providing nuclear safety assistance to the countries of the former Soviet Union. As a result, NRC licensees are not required to pay for the costs of this activity in FY 1999. These costs were previously included in NRC's budget authority and the costs were recovered through annual fees assessed to NRC licensees.

The NRC estimates that approximately \$107.7 million will be recovered in FY 1999 from fees assessed under Part 170 and other receipts, compared to \$94.6 million in FY 1998. The increase from FY 1998 is primarily due to increased Part 170 collections largely attributable to changes in Commission policy included in the FY 1998 final fee rule, such as billing full cost

prior year invoices	-5.5
Subtotal	-2.1
Adjusted Part 171 Collections Required	\$339.8

<sup>1</sup>These adjustments are necessary to ensure that the "billed" amount results in the required collections. ~~Positive amounts indicate amounts billed that will not be collected in FY 1999.~~

Because the final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 <sup>will</sup> ~~will~~ become effective 60 days after publication of the final rule in the Federal Register.

The NRC announced in the FY 1998 proposed rule that the final rule would no longer be mailed to all licensees. However, because the NRC solicited public comments on two potential annual fee schedules for FY 1999, the FY 1999 final rule is being mailed to all licensees. As a cost-saving measure, the NRC does not plan to routinely mail future final fee rules to all licensees, but will send the final rules to any licensee or other person upon request. As a matter of courtesy, the NRC will continue to send the proposed fee rules to all licensees.

In addition to publication in the Federal Register, the final rule is available on the internet at <http://ruleforum.llnl.gov/>. Copies of the final rule will also be mailed upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at [fees@nrc.gov](mailto:fees@nrc.gov).

*Should be at bottom of page 2*

*(20)*

Causes of the events are determined and corrective actions taken. Incident Investigation Teams investigate events of potentially major significance. Although the investigations may result in some generic lessons, the investigations are primarily a direct service provided to the specific licensee and assist the licensee in complying with NRC regulations. The costs of any generic efforts that may result from the investigations, such as the development of new regulatory requirements and guidance, will continue to be recovered through Part 171 annual fees, not through Part 170 fees assessed to the licensee. In addition, any time expended by our Office of Investigations on these activities will be recovered through Part 171 fees. These Part 170 fees will not apply to materials licenses for which no inspection fee is specified in Part 170 because the inspection costs are included in the Part 171 annual fee for those fee categories.

b. Additional Document Reviews.

Part 170 is also expanded to include reviews of documents submitted to the NRC that do not require formal or legal approvals or amendments to the technical specifications or license. Examples are certain financial assurance reviews, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71(e) final safety analysis reports (FSARs). Although no specific approval is issued, reviews of these submittals are services provided by the NRC to identifiable recipients that assist them in complying with NRC regulations.

*Should  
this  
be  
capitalized?*

c. Project Manager Time.

*Start on next page*

*ND*

(Use "PM"  
if desired)

Additionally, all **P M** project managers' time, excluding leave and time spent on generic activities such as rulemaking, will be recovered through Part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned. This change is applicable to all licensees subject to full cost fees under Part 170 and to which project managers are assigned. ✓

Examples of **P M** project manager activities which will be subject to Part 170 cost recovery are those associated with oversight of the assigned license or plant (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. Examples of **P M** project manager generic activities that will not be subject to fee recovery under Part 170 are rulemaking and the development of regulatory guides, generic licensing guides, standard review plans, and generic letters and bulletins. If a **P M** project manager is assigned to more than one license or site, costs for activities other than licensee-specific licensing or inspection activities will be prorated to each of the licenses or sites to which the **P M** project manager is assigned. The concept of full cost recovery for **P M** project managers is similar to the concept of full cost recovery for **R I** Resident Inspectors, which was added to Part 170 in the FY 1998 final fee rule (June 10, 1998; 63 FR 31840). ✓

d. Other.

The NRC also solicited public comment in the proposed rule on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violation (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in

This change results in an estimated \$900,000 being added to the annual fees assessed to approximately 5700 materials licensees.

### 3. Hourly Rates.

The NRC is revising the two professional hourly rates for NRC staff time established in §170.20. These revised rates are based on the number of FY 1999 direct FTEs and the FY 1999 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The hourly rate for the reactor program is \$141 per hour (\$250,403 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.21 of the fee regulations. The hourly rate for the nuclear materials and nuclear waste program is \$140 per hour (\$248,728 per direct FTE). This rate is applicable to all activities for which fees are based on full cost under §170.31 of the fee regulations. In the FY 1998 final fee rule, these rates were \$124 and \$121, respectively. The FY 1998 rates represented a decrease from FY 1997 of \$7 per hour for the reactor program from FY 1997, and \$4 per hour for the materials program.

This increase can be readily explained. In calculating the FY 1999 hourly rates, the NRC staff discovered that a coding error in NRC's budget, which is used in the development of fees, occurred for FY 1998. This coding error contributed to the hourly rate decreases for that year. In addition, costs for direct FTEs and overhead are calculated for the reactor and materials programs and for the surcharge. Although the FY 1999 hourly rates reflect an increase of \$17 - \$19 per hour compared to FY 1998, the error was in the reduced FY 1998 hourly rate, not in the increased FY 1999 hourly rate. Specifically, 134 FTE and approximately

required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method (flat fees). This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that the fees based on the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. The data for the average number of professional staff hours needed to complete licensing action were last updated in FY 1997 (62 FR 29194 ~~May 29, 1997~~ <sup>(1997)</sup>). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1997. The licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the professional hourly rate for FY 1999 of \$140 per hour. ✓ X

The licensing fees reflect an increase in average time for new license applications for 20 of the 33 materials fee categories included in the biennial review, a decrease in average time for 8 fee categories, and the same average time for the remaining 5 fee categories. The average time for export and import new license applications and amendments remained the same for 6 fee categories in §§170.21 and 170.31, and decreased for 4 fee categories.

The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under

\$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of §171.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §171.16. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

5. Administrative Amendments.

a. The NRC is amending §170.2, Scope, and §170.3, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. Part 76 certificates are added to the definition of Materials License in §170.3 (Uranium enrichment facilities are already defined in §170.3). These changes are administrative changes to clarify the applicability of Part 170 fees to these Certificates.

b. The NRC is revising the definition of ~~Inspection~~ <sup>" "</sup> to specifically include performance assessments, evaluations, and incident investigations. This change is being made to incorporate the expansion of Part 170 in this final rule to include these activities.

*Comments  
No*

c. The NRC is revising the definition of ~~special projects~~ <sup>FSAR</sup> to include financial assurance submittals, responses to Confirmatory Action Letters, uranium recovery licensees' land-use survey reports, and 10 CFR 50.71 ~~Final Safety Analysis Reports~~ <sup>FSAR</sup> in the list of examples of documents submitted for review that would be subject to special project fees. This revision is needed to incorporate the change in this final rule to include the review of these documents in Part 170.

d. The NRC is revising §170.5, ~~Communications~~ <sup>Communications</sup>, to indicate that all communications concerning Part 170 should be addressed to the Office of the Chief Financial Officer rather than the Executive Director for Operations. Effective with the January 5, 1997, NRC reorganization, the Executive Director for Operations no longer serves as the Chief Financial Officer. The Chief Financial Officer has been delegated authority to exercise all authority vested in the Commission under 10 CFR Parts 170 and 171.

e. The NRC is deleting the current exemption in §170.11(a)(11), which eliminates ~~amendment fees for amendments~~ <sup>amendment fees for amendments</sup>, to change the name of the Radiation Safety Officer for portable gauge licenses issued in accordance with NUREG-1556<sup>1</sup>, Volume 1. This final rule eliminates the requirement for amendment fees for these licenses and thus the exemption is no longer needed.

---

<sup>2</sup>Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, ~~2120 L Street, NW. (Lower Level), Washington, DC.~~

f. The NRC is adding 170.11(a)(12) to provide an exemption from Part 170 fees for those licensee-specific performance assessments or evaluations for which the licensee volunteers at NRC's request. This change accommodates action in this final rule to include performance assessments and evaluations in Part 170, except those for which the licensee volunteers at NRC's request and which are accepted by the NRC.

g. The NRC is revising §170.12, Payment of Fees, to reflect the revision to Part 170 to include performance assessments, evaluations, and incident investigations, reviews of reports and other documents, and full cost recovery for project managers. This section is also revised to delete references to amendment fees that are not based on full cost to reflect the elimination of ~~of~~ in this final rule. The costs for these activities will be included in the Part 171 annual fee for these materials licensees. ✓

Section 170.12(h), Method of Payment, is redesignated as 170.12(f) and revised to specify the information the NRC needs to issue refunds. This change is necessitated by new Treasury requirements that were effective January 1, 1999.

In summary, the NRC has:

1. Revised Part 170 to include full cost recovery for all plant or licensee-specific inspections, including performance reviews, assessments, evaluations, and incident investigations, reviews of reports and other documents, and all of the project managers' time excluding time spent on generic activities and leave time; ✓

attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692-93). Costs not attributable to a class of licensees are allocated following the conferees' guidance that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." (136 Cong. Rec. at H12692-3). The Conference Report guidance also provides that: <sup>5+3</sup> "these expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." As in the past, these costs are allocated to the entire population of NRC licensees that pay <sup>S</sup> annual fees, based on the amount of the budget directly attributable to a class of licensees. This results in a higher percentage of these costs being allocated to operating power reactor licensees as opposed to other classes of licensees.

The major changes to Part 171 are in the following areas:

1. Reactor Decommissioning/Spent Fuel Storage.

The NRC is revising 10 CFR Part 171.15 to establish a spent fuel storage/reactor decommissioning annual fee. This annual fee will be assessed to all operating and non-operating Part 50 power reactor licensees, except those power reactor licensees who have permanently ceased operations and have no fuel on-site, and to those Part 72 licensees who do not hold a Part 50 license. The full amount of the FY 1999 annual fee will be billed to those

*Recovery?*

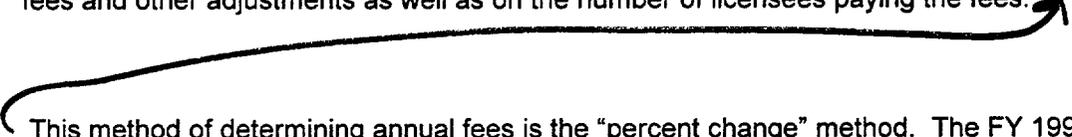
*NO*

the NWF and the General Fund. The total amount to be recovered through annual fees for FY 1999 is \$339.8 million, compared to \$360.2 million for FY 1998.

In the FY 1995 final fee rule ~~(June 20, 1995, 60 FR 32218)~~, the NRC stated that it would stabilize annual fees as follows:

*(1995)*  
↓  
*32225*

For FY 1996 through FY 1999, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either condition occurred, the annual fee base would be recalculated. The percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees.



This method of determining annual fees is the "percent change" method. The FY 1996, FY 1997, and FY 1998 annual fees were based on the percent change method.

New baseline fees are established for FY 1999 based on the program changes that have taken place since the baseline fees were established in FY 1995, including those resulting from the agency's strategic planning efforts, downsizing, reorganization of agency resources, and the proposed addition of a new annual fee class (spent fuel storage/reactor decommissioning) as previously described. In addition, there have been several fee policy changes since FY 1995. Fee policy changes include: the elimination of renewal fees in FY 1996 for most materials licensees, the elimination of amendment fees for these licensees in FY 1999, and the inclusion of these costs in the materials licensees' annual fees.

Well loggers	9,900	
Gauge users	2,600	
Broad scope medical	27,800	
Broad scope manufacturers	26,000	24,800

The annual fees assessed to each class of licensees include a surcharge to recover those NRC budgeted costs that are not directly ~~or solely~~ attributable to the classes of licensees but must be recovered from the licensees to comply with the requirements of OBRA-90. The FY 1999 budgeted costs that will be recovered in the surcharge from all licensees are shown in Table IV.

TABLE IV - Surcharge

Category of Costs	FY 1999 Budgeted Costs (\$M)
1. Activities not <sup>directly</sup> attributable to an existing NRC licensee or class of licensee:	
a. International activities	6.3
b. Agreement State oversight	6.4

<ul style="list-style-type: none"> <li>c. Low-level waste disposal generic activities, and</li> </ul>	4.1
<ul style="list-style-type: none"> <li>d. Site decommissioning management plan activities not recovered under Part 170</li> </ul>	4.6
<p>2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on <i>legal constraints</i> <del>existing law</del> or Commission policy:</p> <p style="margin-left: 40px;">↑</p>	
<ul style="list-style-type: none"> <li>a. Fee exemption for nonprofit education institutions;</li> </ul>	6.9
<ul style="list-style-type: none"> <li>b. Licensing and inspection activities associated with other Federal agencies;</li> </ul>	2.8
<ul style="list-style-type: none"> <li>c. Costs not recovered from small entities under 10 CFR 171.16(c)</li> </ul>	5.3
<p>3. Activities supporting NRC operating licensees and others</p>	
<ul style="list-style-type: none"> <li>a. Regulatory support to Agreement States</li> </ul>	14.6
<ul style="list-style-type: none"> <li>b. Decommissioning/reclamation, except those related to power reactors</li> </ul>	4.2

Uranium recovery	--	--	1.3	<u>0.7</u>	<u>0.7</u>
Total Surcharge		4.1		51.1	55.2

The budgeted costs allocated to each class of licensees and the calculation of the rebaselined fees are described in 3 and 4. below. The ~~workpapers~~<sup>#</sup> which support this final rule show in detail the allocation of NRC budgeted resources for each class of licensee and how the fees are calculated. The ~~workpapers~~<sup>#</sup> may be examined at the NRC Public Document Room, ~~2120 L Street NW (Lower Level), Washington, DC 20555-0001~~<sup>o</sup>.

Because this final FY 1999 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1999 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1999 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1999 rule. Those materials licensees whose license anniversary date during FY 1999 falls before the effective date of the ~~final~~<sup>y</sup> FY 1999 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1998 rate in FY 1999. Those materials licensees whose license anniversary date falls on or after the effective date of the ~~final~~<sup>y</sup> FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

The NRC is continuing the methodology described in the FY 1995 final fee rule to help stabilize fees. Beginning in FY 2000, the NRC will adjust the annual fees only by the percent change in the NRC's total budget. The annual fees in this final FY 1999 rule will be used as a base and the percentage change (plus or minus) in the total FY 1999 budget will be applied to all annual fees for the next two fiscal years (FY 2000 and FY 2001 if OBRA-90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. Therefore, annual fees will be rebaselined every three years, or earlier if warranted. The decision on whether to establish new baseline fees will be made each year prior to promulgation of the proposed fee rule for that fiscal year.

3. Revised Fuel Cycle and Uranium Recovery Matrixes.

The NRC is adopting revised matrixes in the determination of annual fees for fuel facility and uranium recovery licensees. As part of the rebaselining efforts, the NRC is using a revised matrix depicting the categorization of fuel facility and uranium recovery licenses by authorized material and use/activity and the relative programmatic effort associated with each category.

a. Fuel Facility Matrix.

The NRC is using a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in ~~the annual fees more accurately reflecting our~~ *a more accurate reflection of the* current costs of providing generic and other regulatory services to each ~~fuel facility type~~ *type of* fuel facility type.

*Annual loading  
acts  
not  
report  
info  
PP  
29-30*



The FY 1999 budgeted costs of approximately \$16.3 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. The revisions to the matrix take into account changes in process operations at certain fuel facilities. The revised matrix also explicitly recognizes the addition of the uranium enrichment plants to the fee base and a reduction of three licensees ( B&W Parks Township, B&W Research and General Atomic) as the result of the termination of licensed activities. In the revised matrix (which is included in ~~our workpapers that we are making public,~~ <sup>the publicly available work papers</sup> licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations and material form) and according to the level, scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category from safety and safeguards perspectives. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is amenable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in them not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be spread among those remaining licensees/certificate holders, resulting in a higher fee for those remaining in the fee category.

*had been public  
not the case only  
by terminating license  
as OK*

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor).

The effort factors for the various subclasses of fuel facility licensees are as follows:

	No. of Facilities	Effort Factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (33.1%)	76 (54.7%)
Enrichment	2	70 (25.5%)	34 (24.5%)
Low Enriched Uranium Fuel	4	88 (32.0%)	24 (17.3%)
UF6 Conversion	1	12 (4.4%)	0 (0%)
Limited Operations Facility	1	8 (2.9%)	3 (2.2%)
Others	1	6 (2.2%)	2 (1.4%)

*90 of total*

These effort factors are applied to the \$16.3 million total annual fee amount. This amount includes the low level waste (LLW) surcharge and other surcharges allocated to the fuel facility class.

B. Uranium Recovery Matrix.

Of the \$2.1 million total budgeted costs allocated to the uranium recovery class to be recovered through annual fees, approximately \$870,000 will be assessed to DOE to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). The remaining \$1.3 million will be recovered through annual fees assessed to conventional mills, solution mining uranium mills, and mill tailings disposal facilities.

Because the final FY 1999 annual fees will result in certain uranium recovery licensees going from an annual billing process based on the anniversary date of their license to quarterly billing, those licensees will be billed upon publication of the final FY 1999 rule for the balance of the full FY 1999 annual fee. Payment of the balance of the FY 1999 annual fee will be due on the effective date of the FY 1999 rule.

The NRC has revised the matrix established in FY 1995 <sup>to determine</sup> ~~for establishing~~ the annual fees for the conventional mills, solution mining uranium mills, and mill tailings disposal facilities. The revised matrix reflects NRC's significantly increased efforts related to groundwater concerns for in-situ licenses and its somewhat increased efforts related to groundwater concerns for conventional mills. The revised matrix also reflects an increase in regulatory efforts related to waste operations for in-situ licenses. The matrix has also been updated to reflect the changes in the number of licensees within each fee category. The number of conventional mills has

*we should read letter to see of new quarterly payments submitting fee plans of change.*

decreased from 4 in FY 1995 to 3 in FY 1999 and the number of licensees in the solution mining fee category has increased by 1.

The methodology for establishing Part 171 annual fees for uranium recovery licensees has not changed:

(1) The methodology identifies three categories of licenses: conventional uranium mills, solution mining uranium mills, and mill tailings disposal facilities. Each of these categories benefits from the generic uranium recovery program;

*this is how*  
*had how*  
*be a*  
*in yphor*  
*?*

(2) The matrix relates the category and the level of benefit, by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

*has been* ✓

(4) Each of the major program elements ~~was~~ further divided into three subelements;

(5) The three major subelements of generic activities related to uranium facility operations are activities related to the operation of the mill, activities related to the handling and disposal of waste, and activities related to prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to decommissioning of facilities and cleanup of land, reclamation and closure of the tailings

impoundment, and cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses are as follows:

	Number of Licenses	Level of Benefit		
		Category Weight	Total Weight Value	Percent
Class I facilities	3	770	2310	31
Class II facilities	7	645	4515	61
11e(2) disposal	1	475	475	6
11e(2) disposal incidental to existing tailings sites	2	75	150	2

4. Annual Fee Determination for Other Classes.

a. Power Reactor Licensees.

The approximately \$267.3 million in budgeted costs to be recovered through annual fees assessed to operating power reactors is divided equally among the 104 operating reactors. This results in a FY 1999 annual fee of \$2,570,000 per reactor. In addition, each operating reactor ~~would~~ <sup>will</sup> be assessed the spent fuel storage/reactor decommissioning annual fee, which  for FY 1999 is \$206,000 for each power reactor. This results in a total FY 1999 annual fee of \$2,776,000 for each operating power reactor.

b. Spent Fuel Storage/Reactor Decommissioning.

For FY 1999, budgeted costs of approximately \$24.8 million are to be recovered through annual fees assessed to Part 50 power reactors, except those Part 50 licensees who have permanently ceased operations and have no spent fuel <sup>(on-site)</sup> and to Part 72 licensees who  do not hold a Part 50 license. The costs are divided equally among the licensees, resulting in a FY 1999 annual fee of \$206,000 for each licensee.

c. Nonpower Reactors.

Budgeted costs for FY 1999 of approximately \$343,400 are to be recovered from four nonpower reactors subject to annual fees. This results in a FY 1999 annual fee of \$85,900.

d. Rare Earth Facilities.

The FY 1999 budgeted costs of approximately \$91,200 for rare earth facilities to be recovered through annual fees are allocated uniformly to the three licensees who have a specific license for receipt and processing of source material. This results in a FY 1999 annual fee of \$30,400.

e. Materials Users.

To equitably and fairly allocate the \$30.5 million in FY 1999 budgeted costs to be recovered in annual fees assessed to the approximately 5700 diverse material users and registrants, the NRC has continued the methodology used in FY 1995 to establish baseline annual fees for this class. The annual fee is based on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. The annual fee for these categories of licensees is developed as follows:

Annual  $F$ ee = (Application Fee + (Average Inspection Cost divided by Inspection Priority)) multiplied by the constant + (Unique Category Costs).

The constant is the multiple necessary to recovery \$30.5 million and is 1.3 for FY 1999. The unique category costs are any special costs that the NRC has budgeted for a specific

5

category of licensees. For FY 1999, unique costs of approximately \$955,400 were identified for the medical development program which is attributable to medical licensees. The annual fees for each fee category are shown in §171.16(d). ✓

f. Transportation.

Of the approximately \$3.6 million in FY 1999 budgeted costs to be recovered through annual fees assessed to the transportation class of licensees, approximately \$870,000 will be recovered from annual fees assessed to DOE based on the number of Part 71 Certificates of Compliance DOE holds. Of the remaining \$2.7 million, approximately 10 percent is allocated to holders of approved quality assurance plans authorizing use, and approximately 90 percent will be allocated to holders of approved quality assurance plans authorizing design, fabrication, and use. This results in FY 1999 annual fees of \$2,200 for holders of approved quality assurance plans for use only. The FY 1999 annual fees for holders of approved quality assurance plans for design, fabrication, and use is \$66,700.

5. Administrative Amendments.

a. Section 171.13 is amended to establish an annual fee for power reactors in a decommissioning or possession only status.

b. Section 171.15 is revised to read as follows:

(1) The heading for §171.15 is revised to read: Section 171.15 Annual Fees:  
Reactor licenses and independent spent fuel storage licenses

(2) Paragraph (b) of §171.15 is revised in its entirety to establish the FY 1999 annual fees for operating power reactors, power reactors in decommissioning or possession only status that have no spent fuel <sup>made</sup> (on-site) and Part 72 licensees who do not hold Part 50 licenses. Fiscal year references are changed from FY 1998 to FY 1999. The activities comprising the base <sup>skt</sup> annual fees and the additional charge (surcharge) are listed in §171.15(b), (c), and (d) for convenience purposes.

Each operating power reactor will pay an FY 1999 annual fee of \$2,776,000, which includes the annual fee of \$206,000 for spent fuel storage/reactor decommissioning. Each power reactor in decommissioning or possession only status, except those who have permanently ceased operations and have no spent fuel on-site, and each Part 72 licensee who does not hold a Part 50 license will pay the spent fuel storage/reactor decommissioning annual fee of \$206,000.

(3) Paragraph (e) of §171.15 is revised to show the amount of the FY 1999 annual fee for nonpower (test and research) reactors. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in §171.11(a)(2).

c. Section 171.16 is amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies <sup>annually</sup> that it is a small entity using NRC Form 526. This section is revised to clarify that failure to file a small entity certification in a timely manner could form the basis for the denial of any refund that would otherwise be due. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$350,000 to \$5 million will pay a maximum annual fee of \$1,800. A second or lower-tier small entity fee of \$400 is in place for small entities with gross annual receipts of less than \$350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

(2) Section 171.16(d) is revised to establish the FY 1999 annual fees for materials licensees, including ~~Government agencies~~, licensed by the NRC. The FY 1999 annual fees for materials licenses range from \$600 for a license authorizing the use of source material for shielding, to \$27,800 for a license of broad scope for human use of byproduct, source, or special nuclear material. The annual fee for the "master" materials licenses of broad scope issued to ~~Government agencies~~ is \$358,000.

(3) Footnote 1 of §171.16(d) is being amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage

Everywhere else in the rule, you say federal agencies.

only licenses before October 1, 1998, and permanently ceased licensed activities entirely by September 30, 1998. All other licensees and approval holders who held a license or approval on October 1, 1998, will be subject to the FY 1999 annual fees.

Holders of new licenses issued during FY 1999 are subject to a prorated annual fee in accordance with the proration provision of §171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1999, will not be assessed an annual fee for FY 1999. Thereafter, the full annual fee will become due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19, ~~Payment~~, is being amended ~~amended~~ as follows: ✓ ✓

(1) Section 171.19(b) is being revised to update the fiscal year references, to include a billing process for those licensees whose annual fee for the previous fiscal year was based on the anniversary date of the license and whose revised annual fee for the current fiscal year is based on quarterly billing, and to give credit for partial payments made by certain licensees in FY 1999 toward their FY 1999 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1999 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the

fees at the FY 1998 rate in FY 1999. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1999 final rule will be billed at the FY 1999 revised rates during the anniversary month of their license. Payment will be due on the date of the invoice.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC has:

1. Established a new spent fuel storage/reactor decommissioning annual fee in 10 CFR 171.15, and eliminated the current annual fee in 10 CFR 171.16 for independent spent fuel storage licenses. The annual fee will be assessed to all Part 50 power reactor licensees, except those that have permanently ceased operations and have no spent fuel <sup>(on-site)</sup> and to those Part 72 licensees who do not hold a Part 50 license; ✓
2. Established new baseline annual fees for FY 1999.
3. Used revised matrixes for allocating the fuel facility and uranium recovery budgeted costs to licensees in those fee classes.

#### IV. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this ~~proposed~~ <sup>final</sup> rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the ADDRESSES heading.

*see Admin's comments*

*Do we need to include plain. english in the final rule?*

#### V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental ~~impact assessment~~ <sup>final rule</sup> has been prepared for the ~~proposed regulation~~. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

#### VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance

provided by the U.S. Supreme Court on March 4, 1974, in its decision of National Cable  
Television Association, Inc. v. United States, 415 U.S. <sup>352</sup>36 (1974), and Federal Power  
Commission v. New England Power ~~Company~~ <sup>Co.</sup>, 415 U.S. 345 (1974). In these decisions, the  
Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to  
identifiable persons measured by the "value to the recipient" of the agency service. The  
meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S.  
Court of Appeals for the District of Columbia <sup>circuits</sup> National Cable Television Association v. Federal  
Communications Commission, 554 F.2d 1094 (D.C. Cir. 1976); National Association of  
Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (D.C. Cir. 1976);  
Electronic Industries Association <sup>in</sup> v. Federal Communications Commission, 554 F.2d 1109 (D.C.  
Cir. 1976) and Capital Cities Communication, Inc. v. Federal Communications Commission, 554  
F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop  
fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of  
Appeals for the Fifth Circuit in Mississippi Power and Light Co. v. U.S. Nuclear Regulatory  
Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). The Court held  
that--

(1) The NRC had the authority to recover the full cost of providing services to identifiable  
beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1998 to extend the 100 percent fee recovery requirement for NRC through FY 1999. To accomplish this statutory requirement, the NRC, in accordance with §171.13, is publishing the proposed amount of the FY 1999 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed sources and devices and QA

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

### VIII. Regulatory Flexibility Analysis

*OBRA-90* *oh per Susan* ✓ ✓  
The NRC is required by the ~~Omnibus Budget Reconciliation Act of 1990~~ to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

*stet* ✓ ✓  
This final rule establishes the schedule of fees that are necessary to implement the Congressional mandate for FY 1999. The final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 1999.

### IX. Backfit Analysis

*cap No 7  
cc/*

\*\*\*\*\*

*no cap  
ok*

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical reports reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for Part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC:

*W*

*ok*

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

\*\*\*\*\*

<sup>5</sup> There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

<sup>6</sup> Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

<sup>7</sup> Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

<sup>8</sup> No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

<sup>9</sup> Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

<sup>10</sup> This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g.,

international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

fees would be the same for a two-person licensee and for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the ~~unmitigated cost of the rule~~ <sup>increased fees</sup> would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. **Small business** - a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

2. **Manufacturing industry** - a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. **Small organization** - a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less;

4. **Small governmental jurisdiction** - a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. **Small educational institution** - an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees<sup>2</sup>

*Where was that 1?*

---

<sup>2</sup> An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.