



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

AG08-2  
PDR

May 26, 1999

NMSS concurrence  
Concurrence

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

Janice D. Lee, Director  
Office of International Programs

James Lieberman, Director  
Office of Enforcement

Michael L. Springer, Director  
Office of Administration

Trip B. Rothschild, Deputy Assistant  
General Counsel/Legislative Counsel  
Office of the General Counsel

Carl J. Paperiello, Director  
Office of Nuclear Material Safety  
and Safeguards

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

FROM: James Turdici, Director  
Division of Accounting and Finance  
Office of the Chief Financial Officer

SUBJECT: FINAL NOTICE OF RULEMAKING -- 10 CFR PARTS 170  
AND 171 -- 100 PERCENT FEE RECOVERY FOR FY 1999

NMSS  
concurrence  
attached

Attached for your concurrence is a final rule for the FY 1999 fees to be assessed to recover 100 percent of the NRC budget authority. This final rule reflects the Draft Staff Requirements Memorandum (SRM), Version B, dated May 24, 1999. If there are any changes in the final SRM, we will revise this final rule to incorporate those changes. Because this reflects a Draft SRM, this information should be treated as sensitive. In order to meet the requirements to assess and collect the fees by September 30, 1999, this final rule must be signed by June 1, 1999.

Please note that in order to meet the expedited schedule for this final rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than noon, Friday, May 28, 1999.

If you have any questions, please contact Glenda Jackson on 415-6057. Thank you for your assistance in this matter.

Attachment: As stated

cc: T. Barchi, OIG  
A. Galante, CIO  
H. Bell, OIG

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG08

**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 General Fund. The amount to be recovered for FY 1999 is approximately \$449.6 million.

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

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).

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

*Reason for different reference* 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.

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:

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

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. *The commenter 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.*

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 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~~<sup>relying</sup> the definition of "person" under the Atomic Energy Act to argue, 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. 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. Other Federal agency licensing and inspection charges similarly should be assessed against the regulated federal agency. Moreover, small entities and nonprofit educational institutions should not be relieved of fees for the costs associated with them; either a general fund appropriation should be sought to recover those expenses or they should pay their ~~own~~<sup>full</sup> costs. Other commenters also advocated this 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, 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 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.

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. 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 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, leave no other means to be recovered. This includes functions such as 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

*some international activities directly support NRC licensees who export nuclear material & components (Elenda told FCSS that OGC did not want to address this point)*

licensees. The Agreement States and their licensees are not "NRC licensees." The NRC also 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 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.

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:

1. Identified fairness and equity concern categories in the February 1994 Report to Congress on NRC Fee Policy, indicating that legislation was necessary to address these concerns. The recommended legislation was not enacted.  
*95 only?*
2. In FY 1995, acted under existing fee laws to help to mitigate the fairness and equity concerns by treating costs for these activities similar to overhead and distributing the costs to the broadest base of NRC licensees.  
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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.
6. Is seeking as part of its FY 2001 authorization bill authorization to assess fees to other Federal agencies for specific licensing and inspection activities performed for those agencies.  
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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.

1. Expand the scope of Part 170.

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. ✓ X

Many of those commenting on this issue opposed full cost recovery for project 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 PMs 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 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. ✓ X

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."

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 <sup>than in the past</sup> 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.

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, "All other byproduct material", and 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 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 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 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

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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 consideration for the FY 1995 final fee rule (---FR---) 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. 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 fiscal years. As a result, FYs 1996, 1997 and 1998 annual fees were established based on the percent change in the budget. The Commission determined that it is appropriate to establish new baseline fees for FY 1999 based on the

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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.

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 reactors 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

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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~~ <sup>16-2 stat</sup> ~~commenters~~, reactor licensees who have permanently ceased operations, opposed the imposition of the proposed fee for their licenses because they have no fuel on- site. These commenters argued that because they have no fuel 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) <sup>Spent</sup> fuel pool has been ~~off-loaded~~, drained, and decontaminated. PECO stated that it plans to keep PBAPS Unit 1 in ~~SAFSTOR~~ status with the only activity being performance of required Technical Specifications Surveillance Requirements through December 2015.

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 on-site. The NRC <sup>the</sup> agrees with ~~commenters~~ that NRC's generic spent fuel storage activities <sup>are not applicable</sup> ~~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 on-site regardless of the storage option the licensee elects to use. The NRC recognizes that sites will be required to continue to store

*on-site*

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 the budget authority 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 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 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 fee will not be imposed on those six reactors which have permanently ceased operations and have no fuel 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.

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Comment. USEC, although supportive of the decreased FY 1999 annual fees for the Paducah, Kentucky and Portsmouth, Ohio Gaseous Diffusion Plants (GDP's), requested that the NRC revise the fee rule to recognize that the GDP's are the operational equivalent of a single plant and assess a single fee for the complex. USEC argued that a double assessment against the two certificates of compliance results in a significantly disproportionate allocation of costs to USEC. USEC also requested that NRC revise the Effort Factor 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 their current exemption request, we will address those issues in our 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~~ <sup>st factors</sup> merits weighting the value as 10 for the GDP's when compared to other fuel cycle facilities.

D. Other Comments.

*and the number of processes involved with UF6.* ✓

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, and 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 future NRC budgets are not

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 concluded 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 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 operations compared to the one inspection conducted per year prior to NRC's

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 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 for the Commission's review which outlines options for NRC regulation of groundwater and wastes at ISL facilities. NRC's involvement in the regulation of ISLs in the future will be impacted by the Commission's decision on which option is acceptable.

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

Part 50 licensees who are in a decommissioning or possession only status upon publication of the FY 1999 final rule. Payment will be due on the effective date of the FY 1999 rule. For operating power reactors and those Part 72 licensees who do not hold a Part 50 license, the new fee will be reflected in the fourth quarter FY 1999 annual fee bill. Any adjustments for prior payments during FY 1999 will be made in accordance with §171.19(b). The annual fees in 10 CFR 171.16 for Part 72 licenses for independent spent fuel storage have been eliminated.

This change assures equivalent fee treatment for both wet (spent fuel pool) and dry (Independent Spent Fuel Storage Facility) storage of spent fuel. This change will also ensure that power reactor licensees who benefit from NRC's generic activities bear a fair portion of these costs relating to decommissioning of reactors.

This change does not affect the manner in which licensing and inspection costs are recovered (i.e., Part 170 fees will still be assessed to Part 72 licensees and to Part 50 licensees in decommissioning or possession only status for licensing and inspection services). The NRC will continue to include the costs for generic decommissioning/reclamation costs for nonpower reactors, fuel facilities, materials, and uranium recovery licensees in the surcharge assessed to operating licensees, including operating power reactors.

## 2. Annual Fees.

The NRC is establishing new baseline annual fees for FY 1999. The annual fees in §§171.15 and 171.16 are revised for FY 1999 to recover approximately 100 percent of the FY 1999 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from

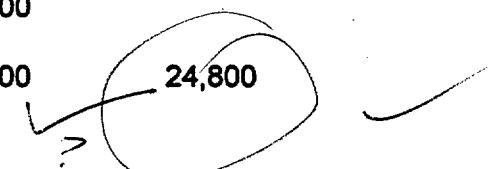
Table III below shows the FY 1999 rebaselined annual fees for representative categories of licensees.

TABLE III

<u>Class of Licensees</u>	<u>FY 1999 Annual Fee</u>
Power Reactors (including spent fuel storage/reactor decommissioning annual fee)	\$2,776,000
Spent fuel storage/reactor decommissioning	206,000
Nonpower Reactors	85,900
High Enriched Uranium Fuel Facility	3,281,000
Low Enriched Uranium Fuel Facility	1,100,000
UF <sub>6</sub> Conversion Facility	472,000
Uranium Mills	131,000
Solution Mining	109,000
Transportation	
Users and Fabricators	66,700
Users only	2,200
Typical Materials Licenses	
Radiographers	14,700

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)
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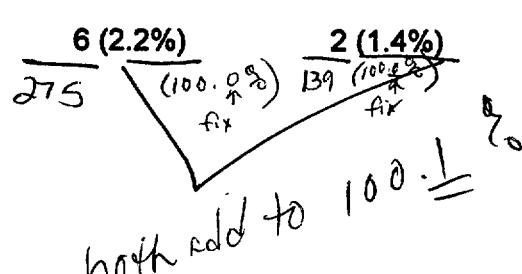
1. Activities not attributable to an existing NRC licensee or class of licensee:

- a. International activities 6.3
- b. Agreement State oversight 6.4

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	<u>Effort Factors</u>	
	<u>Facilities</u>	<u>Safety</u>	<u>Safeguards</u>
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%)
Total		275 (100.0%) fix	139 (100.0%) fix



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 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 on-site, 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.

*see pg 33*  
*1/15/98*

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.

are shown in paragraph (d)(1) of this section. The activities comprising the base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 1999 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is \$206,000.

*Spca*

(2) This fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (this fee is also included in the operating power reactor annual fee show in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the surcharge are shown in

	installation (ISFSI).....	See 10 CFR part 171.15(c)
C.	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.....	\$1,200
D.	All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2).....	\$3,300
E.	Licenses or certificates for the operation of a uranium enrichment facility.....	\$2,043,000
2.	Source material:	
A.(1)	Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.....	\$472,000
(2)	Licenses for possession and use of source material in recovery operations	

*no financial  
what about  
"construction"  
as no fed  
previously?  
pg 104*

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