

uranium recovery licensees by doing everything possible to reduce the amount of time spent by staff working on licensing issues related to uranium recovery licenses. They suggested that this could be accomplished through the streamlining of the regulatory process, including delegating regulation of in-situ leach wellfields to the States through Memoranda of Understanding and more reliance on Safety and Environmental Review Panels and performance based-licensing.

Response. NMSS modified its policy for project management fee billing effective July 29, 2001. The modified policy states that an NRC employee must spend more than 75 percent of his/her time in any two-week period performing duties to support a facility's license or certificate review to be considered a PM for full-cost fee billing purposes (Full-cost fee billing causes a prorated portion of a PM's indirect time to be charged to the licensee. The modified NMSS policy reduced the number of PMs whose indirect time is billed to the licensee.). The NRC has not changed that policy, nor how it is being implemented. The FY 2003 proposed fee rule did not propose to change the NMSS PM fee billing policy, so there was no need for the proposed rule to address its implementation status. If licensees have specific questions about particular invoices, they may request more details from the NRC and the staff will provide additional information. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC only charges fees to uranium recovery (or any other) licensees based on its budgeted costs. Regarding the comments suggesting that staff time devoted to regulating uranium recovery facilities should be reduced, the NRC notes that the manner in which NRC carries out its regulatory responsibilities is not addressed in this final rule, since this issue is outside the scope of this rulemaking. Nonetheless, the Commission strives to ensure that all of its efforts are needed to carry out its health, safety, common defense and security responsibilities and frequently modifies its regulatory regime to reduce unnecessary burden on the regulated community. Concerns about specific licensee review efforts conducted by the staff should be directed to the appropriate program office.

3. Fee Waivers for Special Projects

Comment. One commenter raised a number of concerns with NRC's fee waiver policy. This commenter stated that this policy is flawed, unworkable,

and counterproductive to regulatory efficiency and effectiveness. In particular, this commenter stated that NRC's fee waiver policy is not consistent with the definitions of part 170 and part 171 fees as described in the FY 2003 proposed fee rule. The commenter stated that the Office of the Chief Financial Officer (OCFO) had been charging part 170 fees for documents that did not fall under the description in the FY 2003 proposed fee rule of documents for which part 170 fees should be assessed. This commenter challenged as flawed various reasons that OCFO had previously given to deny fee waivers in the past. The commenter advocated cooperative efforts between NRC and industry, and expressed concern that OCFO positions blocked this cooperation. The commenter suggested changing NRC's fee waiver policy to eliminate disincentives for industry to be proactive in addressing generic regulatory issues.

Response. The NRC did not propose to revise its policy for those services which part 170 fees are assessed, nor the existing fee waiver policy in this rulemaking. The proposed rule's description of purposes for which part 170 fees would apply is intended to be illustrative, not exhaustive. The NRC clarified its fee waiver policy in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), and responded extensively to comments similar to the one summarized above in the Response to Comments section of that final rule. The Commission's position with respect to its existing fee waiver policy has not changed. In brief, the NRC has consistently applied its policy of waiving the part 170 fees for a special project submitted to the NRC for the purpose of supporting "NRC's" generic regulatory improvements, and assessing part 170 fees for the review of a special project that is submitted for other purposes, including those that support "industry" generic improvements. The NRC finds no justification for granting a part 170 fee waiver, as the comment suggests, whenever a nuclear industry organization submits a proposal for generic regulatory improvement. Fee waivers will be granted only if the NRC determines the submission will be used for NRC's generic regulatory improvements, and the initiative was submitted specifically for that purpose. Thus, fee waivers are only appropriate where the NRC's review of the industry initiative is part of the process of developing the NRC's generic regulatory program, and the review activities are similar to other NRC generic regulatory

activities whose costs are recovered through part 171 annual fees.

The NRC does not believe its fee waiver policy discourages cooperative efforts between the agency and industry, and that its assessment of part 170 fees for a special project is fully consistent with the NRC's policies on industry initiatives. Under the existing fee waiver criteria, NRC will waive the review fees for a special project submitted for the purpose of supporting the agency's regulatory improvements as long as the NRC staff agrees with the applicant at the time of submission that it will be used by the NRC in developing or improving its regulatory framework. The NRC encourages any special project applicant who believes that its proposal will help improve NRC's regulatory process to discuss its proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

C. Specific Part 171 Issues

1. Annual Fees vs. Hourly Fees

Comment. One commenter stated that it prefers annual fees to hourly fees, since it is easier to plan and allocate resources related to annual fees, while hourly fees are more unpredictable and more difficult to incorporate into a licensee's financial plan. Some commenters complained, however, that a disproportionate amount of the budget is recovered through annual fees.

Response. While the NRC appreciates the concerns raised by this commenter, the agency notes that its collection of part 170 fees is consistent with Federal law. The NRC assesses part 170 fees under the IOAA, which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Report accompanying OBRA-90 specifically states that the Conference Committee " * * * expects the NRC to continue to assess fees under the [IOAA] to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives" (136 Cong. Rec. H12692-3, daily ed. October 26 1990). The NRC has received additional direction on this issue in the Office of Management and Budget (OMB) Circular A-25, in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction in charging part 170 fees to recover the costs of providing special benefits to identifiable recipients.