

minimal risk, and that their facility operated in a very competitive international market and so the magnitude of the fee increase represents a serious economic burden. The commenter asked that the proposed fees for fuel facilities be reviewed and that the amount of the increase be reduced to a more reasonable level (on the order of 10 percent) to be consistent with other facilities and the general increasing costs of NRC operations.

Response. The part 171 annual fees for each class of licenses are established to recover the costs for generic activities related to that class of licenses, including rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees. The NRC believes this methodology is consistent with all applicable laws, regulations, and policies. Because the costs for one class of licenses may increase or decrease at different rates than the costs for other classes of licenses, fees for different classes will increase or decrease at different rates accordingly. The NRC has considered capping fee increases for classes of licenses, but has not chosen to do so for potential legal and fairness and equity reasons.

The NRC appreciates the concerns raised about fee predictability and stability. In order to recover its budgeted annual costs in compliance with the OBRA-90, as amended, the NRC annually promulgates a rule establishing licensee fees. In light of concerns about annual fluctuations in these fees, the NRC announced in FY 1995 that annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated by rebaselining. Commission policy sets the maximum interval between rebaselined fee schedules at three years. Based on the change in the magnitude of the budget to be recovered through fees, the Commission determined that it was appropriate to rebaseline its part 171 annual fees in FY 2003. Rebasing fees resulted in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities), and decreased

annual fees for two classes (non-power reactors and uranium recovery). For the small materials users and transportation classes, some categories of licensees will have increased annual fees and others will have decreased annual fees.

Regarding the comment that fees to fuel facilities represent an economic burden, since FY 1991 the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the policies reflected in the Regulatory Flexibility Act. Granting fee relief to the fuel facility licensees on the basis of economic considerations could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licenses be required to subsidize fuel facilities through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be difficult to develop a rationale for waiving the fees for one class of licenses while denying similar requests from other NRC licensees which may also be experiencing economic downturns.

The annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The NRC initially established a fuel facility "effort/fee" matrix in the FY 1995 fee rule (60 FR 32218; June 20, 1995), further revising it in the FY 1999 fee rule (64 FR 31448; June 10, 1999). The purpose of this matrix is to accurately reflect the NRC's current costs of providing generic and other regulatory services to each type of fuel facility. The matrix depicts the categorization of licenses according to their activities, level, scope, depth of coverage, and rigor or generic regulatory programmatic effort applicable to each facility category from a safety and safeguards perspective. The relative weighted factors for each facility type for the various fee subclasses are depicted in Table VII. The matrix has been quite valuable in helping the NRC assign appropriate fees for each type of fuel facility. It is routinely available among the workpapers during the public comment process of each year's rulemaking for revision of fee schedules

and the fact that it has withstood this scrutiny for many years continues to lend support to the NRC's confidence in it as a robust tool in the fee development process.

Annual Fees for Spent Fuel Storage/Reactor Decommissioning

Comment. One commenter stated that the proposed 29.3 percent increase in annual fees for spent fuel storage/reactor decommissioning licensees is not equitable and places an undue burden on this particular class of licensees, which do not generate revenue through the sale of electricity and do not have a guarantee of recovering additional costs by petitioning local public utility commissions. The commenter further stated that rapidly rising annual fee increases for spent fuel storage/reactor decommissioning licensees place undue budget constraints that could affect the resources available for performing plant decommissioning activities.

Response. The NRC has responded to similar comments in previous rulemakings. Annual fees for the classes of licenses are based on the budgeted costs for the classes, as well as a surcharge to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, including activities that are exempt from part 170 fees by law or Commission policy. Since budgeted costs for one class of licenses may rise or fall at different rates than for other classes of licenses, so will annual fees. The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since FY 2002, including homeland security activities that are on the fee base for FY 2003. Recovering the costs associated with spent fuel storage and reactor decommissioning from operating power reactors, power reactors in decommissioning or possession only status if they have fuel on site, and independent spent fuel storage part 72 licensees who do not hold a part 50 license, is consistent with the intent of OBRA-90 to assess annual fees to licensees or classes of licenses, commensurate with the expenditure of the NRC's resources. The Commission believes it would be inequitable to grant fee relief to one class of licenses (except to address small entity issues in accordance with the Regulatory Flexibility Act) on the basis of economic considerations, since this class would then need to be subsidized by other classes of licenses.