

level waste sites will eventually exceed the revenues immediately collected upon disposal.

Response. The amount of \$7 million for NRC's low-level waste activities is the amount identified in the FY 1995 budget to be recovered through fees for these activities. If the NRC costs of these activities increase over the long term and are included in the NRC budget, the NRC is required by OBRA-90 to identify and to recover the increased costs from its licensees in the year in which the costs are budgeted. OBRA-90 does not permit the NRC to recover potential future costs that are not included in the current FY 1995 budget.

3. Spent Fuel Storage

Comment. One commenter encouraged the NRC to ensure that any costs associated with spent fuel storage and transportation, particularly the costs associated with the review of the Department of Energy's (DOE) multi-purpose canister program, are kept properly separated from the costs for specific utility licensing actions. Because these activities are funded from different sources, the commenter stated that NRC must ensure that the cost burden for the DOE reviews is not reflected in utility licensing fees. The commenter noted that in the FY 1995 proposed rule there is no explanation for maintaining the fees for general licenses for storage of spent fuel at substantially higher levels than the fee in 1992 (\$43,000) or 1993 (\$136,000). The commenter questioned whether the fee charged to spent fuel storage licensees includes amounts allocated for other activities.

Response. The costs associated with the review of the DOE's multi-purpose canister program are costs related to the High-Level Waste program which are appropriated from the High Level Waste Fund and separated from specific utility licensing actions. Therefore, in accordance with OBRA-90, the DOE review costs are not included in utility licensing fees, but rather are recovered from the Nuclear Waste Fund. Although the FY 1995 annual fee for spent storage licenses (\$279,000) is higher than in FY 1992 (\$43,000) or 1993 (\$136,000), it is lower than the fee assessed in FY 1994 (\$365,170). The reasons for the increases over FY 1992 and FY 1993 were explained in detail in the final FY 1994 rule (59 FR 36902; July 20, 1994). To recap, first, the budgeted amount necessary to regulate spent fuel facilities increased to provide regulatory oversight for the increased number of facilities. Additionally, as the licensing of these facilities was completed, the amount of fees from 10 CFR part 170

necessarily decreased. This resulted in an increased amount that must be recovered from annual fees in 10 CFR part 171.

4. Annual Fees Should Be Prorated When a License is Downgraded

Comment. One commenter proposed that § 171.17(b) be amended to allow proration of annual fees for licenses that are downgraded during the year.

Response. The NRC agrees with the commenter that some provision should be made in the annual fee regulations for those instances where a license is downgraded to a license category with a lower annual fee during the fiscal year. Although the NRC currently has in place a system to track applications for new licenses and terminations which can be readily used for fee purposes, no similar system exists that could easily track upgrades or downgrades of licenses. As a result, § 171.17 is amended to allow for proration of the annual fee for a downgraded license upon request of the licensee. Such a request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

If a timely proration request is filed, annual fees for licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Licenses for which applications for downgrade are filed on or after April 1 of the fiscal year are assessed the full fee for that fiscal year.

5. Avoid Billing for Services Rendered One Year Prior to Billing Date

Comment. One commenter proposed that the NRC void any bill for costs of regulatory services that were performed more than one year prior to the invoice date. The commenter stated that this would result in the NRC striving to issue invoices in a timely manner to assure recovery of its budget authority and would not place the licensee in a position of having to pay an unexpected and potentially large invoice.

Response. The NRC has not included this proposal in the final rule. The NRC is required by the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 to pursue debts and claims owed to the U.S. government. However, the NRC has made efforts to issue bills in a more timely manner. During the past year, the NRC has implemented procedures to bill for licensing reviews and inspections within 30 days of the close of the billing quarter during which the review or inspection occurred or was completed. Although there have been rare cases where bills were not issued in a timely manner for licensing and inspection activities, the NRC believes that the 30-day billing procedures will help to minimize the number of such occurrences in the future.

6. Reinstate Fee Ceiling for Topical Report Reviews

Comment. One commenter requested that the NRC reinstate a fee ceiling in 10 CFR part 170 for topical report reviews because a fee ceiling would encourage the submittal of topical reports, thus contributing to the advance of the state-of-the-art in the nuclear industry and the resultant improvement in nuclear plant safety. The commenter stated that the current uncapped fee structure encourages prolonged and unreasonably detailed technical reviews by NRC contractors.

Response. The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC's costs for topical report reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable fee ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA-92. The policy of assessing 10 CFR