

individual(s) who performed the work, and the dates on which the work was done.

4. Assess fees to the Department of Energy (DOE) for NRC review of DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The petitioner stated that it is inequitable and improper for DOE to receive NRC oversight and review of DOE mill tailings site reclamation activities without contributing anything to the NRC budget.

Of the 566 comments received on the fee policy review, 21 specifically addressed the AMC petition. Others who provided comments on the fee policy review addressed some of the same issues raised by the petitioner, such as inequities in the fee systems and assessment of Part 170 fees to Federal agencies because these issues were included in the overall review of NRC fee policy. Of the 21 comments, four were from fuel facility licensees, applicants, or their representatives; three were from facility licensees; one was from an Agreement State; nine were from materials licensees or medical associations; one was from two uranium recovery licensees; one was from an industry group representing fuel fabrication facilities, conversion facilities, uranium enrichment plants, material processing facilities, transporters, and other related service facilities; one was from a company holding materials, export and import, distribution, and non-power reactor licenses; and one was from the petitioner, who represents the mining and milling industry.

A majority of the commenters supported all or portions of the petition. After careful consideration of the comments, the Commission has decided to deny the petition for rulemaking for reasons stated below.

II. Responses to Comments

1. *Comment:* Although commenters did not support a full waiver of the annual fee for facilities that are not operating, several agreed that some relief should be provided in the form of reduced fees. One commenter suggested a tiered fee system that would result in full fees for operating facilities, reduced fees for facilities in shutdown or standby status, and minimal fees for licenses who have shut down and have submitted a decommissioning plan. Another commenter indicated that although the fee should not be waived, the NRC should consider the licensee's ability to pass the costs of the NRC fees to its customers—"cost passthrough"—to determine the fee level for facilities that require minimal NRC participation.

Response: The Commission acknowledges the concern raised by the petitioner regarding non-operating facilities and has carefully evaluated the comments received on this issue. The Commission has considered a range of options: (a) continuing the current policy of charging operating mills and those in standby status annual fees; (b) only charging operating mills annual fees; and (c) charging operating mills, facilities in standby status, and those with possession-only licenses annual fees. The Commission has concluded that the current policy represents the fairest option available under current legislation and therefore has denied petitioner's request. The NRC will continue to assess annual fees based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material, independent of whether the facility is actively operating or in a standby status. The basic premise for this policy is that the benefit the NRC provides a licensee is the authority to use licensed material. The choice of whether or not to exercise that authority is a business decision of the licensee.

Because of the mandate that NRC recover approximately 100 percent of its budget through fees, to refrain from charging annual fees to mills in a standby status would increase the annual fees for the other licensees in the class because the number of licensees assessed annual fees would decrease. Such an approach would raise fairness concerns.

The Commission recognizes that some may perceive it to be unfair to charge a licensee an annual fee when the facility in question is not generating revenue. However, the Commission has previously considered the extent to which a licensee's economic status and ability to "pass through" its costs to its customers should be considered in establishing fees, and the Commission has declined to do so. As stated in the final rule published July 20, 1993 (58 FR 38666), the Commission concluded, after full consideration of the "cost passthrough" question, that it cannot set fees using passthrough considerations with reasonable accuracy and at reasonable costs even for classes of licensees with few members. The Commission has no new information that would cause it to change this policy. The Commission is also unable to use factors such as the revenue earned by a licensee or the licensee's profit from the use of licensed material in developing the fees because OBRA-90 requires that annual charges must, to the maximum extent practicable, have a

reasonable relationship to the cost of providing regulatory services.

The Commission decided that it would not be appropriate to charge facilities who have received a POL an annual fee. While the NRC incurs generic costs relating to the decommissioning/reclamation of facilities with POLs, many POL holders were induced to relinquish their authority to operate by the Commission's policy of not charging annual fees to holders of POLs (56 FR 31485, July 10, 1991). It would be unjust at this date to change this policy with respect to these facilities. Primarily for this reason, the Commission has also decided not to implement a tiered approach recommended by some commenters, in which all licensees would pay an annual fee, including those no longer authorized to operate. In sum, the NRC will continue to waive the fee for licensees who have voluntarily relinquished the authority to operate and have ceased operations. This includes licensees who have voluntarily relinquished their authority to operate, but must continue to be licensed to possess nuclear materials, that is, possession-only licenses (POLs). In articulating our policy, we emphasize that, contrary to the petitioner's statement, reclamation or decommissioning plans do not have to be approved for the annual fee to be waived for these licensees. Therefore, petitioner's argument that some sites are charged annual fees because of the NRC's failure to complete review of reclamation plans is fallacious. The Commission's fee policy with respect to operating, standby, and POL status is consistently applied to all classes of licensees, including uranium recovery, fuel fabrication, and power reactor licensees.

2. *Comment:* A majority of the commenters supported the petitioner's request that licensees be given the ability to oversee and have input into the NRC budget and to review NRC fees annually. Commenters suggested that a review board, with at least some members representing the regulated parties, be established to review NRC activities to control costs, to ensure that maximum benefits and effectiveness are achieved, and to monitor NRC activities to prevent the appearances of regulatory abuse. One commenter stated that such a review board could benefit NRC, citing as an example that the NRC incurred higher costs by using a government laboratory than the commenter incurred using a commercial laboratory for the same type of service. Another commenter suggested that the review board propose revisions to the fee