

system and methods to eliminate inequities in the treatment of licensees. Another commenter sought a greater role in the development of regulatory programs that could have a substantial impact on the economic status of licensees or result in license termination. On the other hand, one commenter disagreed with the petitioner, stating that a scheme whereby licensees would directly control the agency's activities would be inappropriate for a regulatory program. Another commenter was skeptical that the petitioner's suggestions would simplify or otherwise lead to a more equitable allocation of Commission costs.

Several commenters agreed with the petitioner that the fees charged do not reflect the benefits derived and expressed concern with the fee amounts. One commenter stated that as fees increase and more licenses are terminated, it will create a disincentive for continuing their licensed activities, which include beneficial research. This commenter suggested that the fee be proportional to the number of pieces of equipment used, the small amounts of low energy radioisotopes in use, and the status of the licensee as a business or not-for-profit organization.

Other commenters maintained that the fee increases may be due to a lack of accountability by NRC; that the frequency and details covered in inspections is unnecessary and inefficient; and that a limited number of licensees are being billed to support NRC services to Federal agencies, Agreement States, and international organizations. Some commenters suggested that NRC's management structure be reviewed to streamline activities and reduce redundancy and unnecessary paperwork, that NRC review its mechanism for calculating fees, and that either costs be borne by the organization receiving the services or these costs should be recovered through tax dollars rather than fees.

Response: The Commission addressed many of these issues and similar comments regarding the NRC budget in the final rules published July 10, 1991 (56 FR 31482), July 23, 1992 (57 FR 32696), and July 20, 1993 (58 FR 38672). As stated in these final rules, the requirement for the NRC to recover 100 percent of its budget through fees does not exempt the NRC from the normal Government budget review and decisionmaking process. The Commission monitors and controls its operating costs and is tightening its financial operations by increasing the effectiveness and efficiency of its program financing. Notably, as a result

of its initial efforts, the Commission proposed, and Congress approved, a \$12.7 million rescission to the original appropriation for FY 1994. The NRC is committed to making its regulatory programs more efficient wherever it can do so without diminishing its ability to protect the public health and safety.

In addition to its own rigorous budget review, the NRC must submit its budget to the Office of Management and Budget for review. The NRC budget is then sent to the Congress for approval. The bases for requested NRC resources are thoroughly addressed by the Congress through hearings and written submissions. This budget process, combined with the internal NRC review process, ensures that the approved budget resources are those necessary for NRC to implement its statutory responsibilities and to carry out an effective regulatory program. The fees established by NRC must be consistent with its annual budget in order to comply with OBRA-90. As in the past, the NRC will continue to base its fees on its Congressionally approved budget authority and provide the public and licensees with detailed supporting information concerning the bases for its fees. This information will continue to be available at the activity level, the lowest level for budgeting purposes.

As a result of the very extensive review of the NRC budget, the Commission opposes the establishment of a review board to oversee the NRC budget. In 1994 testimony before Congress on the NRC's fee policy review, Chairman Selin reiterated the Commission's position that it would be inappropriate to have the regulated community make recommendations which the NRC would have to accept or rebut on how it carries out its regulatory function. The Commission also believes that there are other avenues for licensees to communicate with the NRC concerning the efficiency of the NRC's regulatory program.

Additionally, the NRC complies with legislation such as the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that require the agency to analyze the economic effects of new regulations on licensees. The NRC staff also prepares detailed cost-benefit analyses to justify any new regulatory requirements. These analyses are carefully reviewed by the Commission. The Commission has seen nothing either in the petition or comments on the petition that would lead it to change its approach in this area. The Commission would like to emphasize, however, that licensees are always welcome and expected to

comment on and propose revisions to proposed rulemakings, including the accompanying cost-benefit analyses, and that such comments, along with the day-to-day interaction between licensees and the agency, in the Commission's view provide an adequate and successful method of keeping each group apprised of the other's concerns.

For the foregoing reasons, the Commission is denying the petitioner's request that a licensee review board be established to oversee and make recommendations about NRC's budget and fees.

The Commission has also carefully considered the petitioner's concerns and the comments received regarding the annual fee increases and the hourly rate, issues which have been raised by commenters in previous rulemakings. As previously stated in the Commission's response to commenters on the FY 1993 rule (58 FR 38674), the NRC is unable to use the CPI or other indices in the development of the hourly rate or fees charged under 10 CFR Part 170 and 171 because these increases may not allow the NRC to meet the statutory requirement of OBRA-90 to recover approximately 100 percent of the NRC budget authority through fees. The NRC's Congressionally-approved budget is determined on the basis of the resources needed to carry out the agency mission. The NRC professional hourly rate is established to recover approximately 100 percent of the budget authority, less the appropriation from the Nuclear Waste Fund, as required by OBRA-90. The method and budgeted costs used by NRC in the development of the hourly rate are discussed in Part IV, Section-by-Section Analysis, of 10 CFR 170.20 in each proposed and final fee rule. The NRC budgeted costs for salaries and benefits, administrative support, travel, and program support (excluding contract or other services in support of the line organization's direct program), less offsetting receipts, are allocated uniformly to the direct FTEs. The hourly rate is calculated by dividing the budget allocated to the direct FTEs by the number of direct FTEs and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Commission continues to believe that this cost allocation is appropriate and represents a practical and equitable way of allocating these costs to NRC licensees and applicants in order to meet the 100 percent recovery requirement of OBRA-90.

The Commission has explained in the past why it does not believe that basing