

## IV. Public Comment Analysis

### Overview of Public Comments

The NRC received four written comment submissions for the proposed rule. A comment submission for the purpose of this rule is defined as a communication or document submitted to the NRC by an individual or entity with one or more distinct comments addressing a subject or an issue. A comment, on the other hand, refers to a statement made in the submission addressing a subject or issue. In general, the commenters were supportive of the specific proposed regulatory changes, although most commenters expressed concerns about broader fee-policy issues related to transparency and fairness.

The commenters are listed in Table [REDACTED], and are classified as follows:

One member of the uranium industry (Wyoming Mining Association (WMA)); one nuclear power plant operator (Exelon); one [private citizen](#) ~~NRC employee~~; and one industry trade group (Nuclear Energy Institute (NEI)).

TABLE [REDACTED] – FY 2017 PROPOSED FEE RULE COMMENTER SUBMISSIONS

Commenter	Affiliation	ADAMS Accession No.	Abbreviation
Travis Deti	Wyoming Mining Association	ML17108A265	WMA
J. Bradley Fewell	Exelon Generation Company, LLC	ML17108A267	Exelon
Joseph E. Pollock	Nuclear Energy Institute	ML17108A266	NEI
Kevin Ramsey	Private Citizen	ML17108A264	KR

Information about obtaining the complete text of the comment submissions is available in Section XIV, “Availability of Documents,” of this document.

### Public Comments and NRC Responses

The NRC has carefully considered the public comments received. The comments have been organized by topic followed by the NRC response.

## **A. Uranium Recovery**

**Comment:** The increases for each category of uranium recovery license over the 2016 annual fees exceed 8 percent. This increase exceeds the current rate of inflation and increases in costs from vendors, suppliers, and contractors with which the uranium recovery industry does business. It exceeds annual salary increases for uranium recovery workers as well. Uranium prices have been in overall decline for the past five (5) years. The uranium recovery industry fails to see how increases of this magnitude can be justified.

It is not clear how the NRC will address the change in workload for this license class when the NRC will lose nearly all of the uranium recovery licenses with the entry of Wyoming as an Agreement State. Per the Fee Work Papers, there are approximately 29 FTE for 9 uranium recovery licensees. Basic In-Situ recovery facilities have seen annual fees increase 80% since FY 2012, and this small licensee class cannot continue to absorb additional losses to the fee base without corresponding NRC resource reductions. (WMA, NEI, Exelon)

**Response:** As discussed in the proposed FY 2017 ~~Fee Rule~~fee rule, the proposed amendments to the annual fees are necessary to comply with OBRA-90, which requires the NRC to recover approximately 90 percent of its annual budget through fees. The agency's budgeted activities for the uranium recovery fee class increased in FY 2017 due to an increase in the number of safety and environmental reviews to support new license applications and license renewals. Further, an increase in the number of licensed facilities served to increase the budgeted resources for uranium recovery. As described in the proposed FY 2017 ~~Fee Rule~~fee rule, the annual fees are set after estimating how much will be recovered through 10 CFR part 170 user fees. In FY 2017, activities that cannot be billed under the hourly charges in

10 CFR part 170 increased or remained steady. Examples include support for adjudicatory hearings and development of regulatory infrastructure.

With regard to hearings, the NRC's technical and legal staff perform numerous activities including the provision of expert testimony on areas such as groundwater, the National Environmental Policy Act, Tribal consultation, seismology, and geochemistry. Other examples of activities not subject to [10 CFR p](#)Part 170 user fees include NRC staff support for non-licensing tasks (such as meetings with the U.S. Environmental Protection Agency regarding their draft 40 CFR part 192 Rule, regulatory guidance development, and Tribal outreach). Because the NRC (by law) must recover approximately 90 percent of its annual budget authority, the NRC cannot take the rate of inflation or other economic indicators into account when deriving the annual fees.

Specific to Wyoming's request to become an Agreement State, the NRC staff has established a transition team to evaluate the potential impacts and appropriately transition work in the event the NRC approves Wyoming's application. As part of our Wyoming transition initiative, the NRC will explore alternative methods of developing the fee schedule to support a continued fair and equitable assessment of fees from a smaller set of licensees after Wyoming becomes an Agreement State.

In addition, as part of the fees transformation initiative, the NRC is beginning a voluntary pilot to explore whether a flat fee structure could be established for routine licensing matters in the area of uranium recovery. As part of this pilot the NRC will engage with stakeholders to solicit feedback on the proposed strategy before a final decision is made.

No change was made to the final rule in response to this comment.

**Comment:** The WMA questions why work on specific projects should increase fees for all licensees. Costs related to specific projects should be recovered through hourly charges.  
(WMA)

**Response:** Costs related to specific projects are recovered through hourly charges and do not increase fees for all licensees. The part of the FY 2017 ~~Fee Rule~~fee rule discussion being questioned by the commenter is only a general description of the business environment affecting the 10 CFR part 170 user fees (i.e., hourly charges). As described in the FY 2017 ~~Fee Rule~~fee rule, the annual fees are determined after deducting the amount to be recovered through 10 CFR part 170 user fees.

No change was made to the final rule in response to this comment.

**Comment:** The proposed fee rule contains a 9% annual fee increase for uranium recovery facilities due to, in part, an increase in the budgeted resources to “support contested hearing activities.” The NRC should consider modifying the existing policy for treatment of contested hearings, particularly for fee categories comprised of a small number of licensees where imposition of these additional costs are punitive and disadvantage licensees’ ability to compete in global markets. The industry supports treating costs associated with contested hearings, for all licensee classes, as non-fee activities. (NEI, Exelon)

**Response:** Annual fees for the uranium recovery fee class increased in FY 2017 due to an increase in budgetary resources. Resources to support the fee class were increased in support of additional safety and environmental reviews and an increased number of licensed facilities. Budgetary resources also increased in FY 2017 due, in part, to support an increase in contested uranium recovery hearings before Atomic Safety and Licensing Boards (ASLB). Hearing, OGC, and ASLB support are non-fee recoverable. Therefore, the work on these contested hearings must be recouped through annual fees. Hearings are budgeted as our best estimate based on historical expenditures; however, the actual resources expended will vary depending on the number of contentions and the complexity of each contention. Each hearing is different. As part of our Wyoming transition initiative, the NRC will explore alternative methods of developing the fee schedule to support a continued fair and equitable assessment of fees to recover the budgetary resources associated with hearings. The alternative methods

may include seeking an appropriation off the fee base or classifying the resources as fee relief.

In this stage of the process, there is not sufficient time to complete this action for ~~the~~ proposed this fee rule. The NRC will evaluate these changes and the associated impacts across the various ~~annual~~-fee classes and categories in a future fee rule.

No change was made to the final rule in response to this comment.

**Comment:** Page 8702 of the Federal Register Notice states that uranium recovery licensee fees increased, in part, due to the increased workload for congressional hearings and inquiries. It is inappropriate to seek compensation from any licensee for this activity. The level of NRC resources to support this activity is not transparent. We expect to see the recovery amount for this business line to go down as a result of the removal of this activity. (NEI, Exelon)

**Response:** OBRA-90 requires the NRC to collect fees for a broad amount of activities necessary to operate the agency including guidance and regulatory infrastructure as well as government compliance activities. The annual fee increased for the overall fee class due to an increase in the budgeted resources to support contested hearing activities, technical guidance updates, and staff training. Because congressional hearings and inquiries are not the major driver for the increase in the annual fees, this language will be deleted from the final rule. This change will not impact the recovery amount or fees assessed.

## **B. Transparency**

**Comment:** In particular, although the NRC has added some additional information to the work papers supporting the proposed fee rule, the papers still lack enough detail to precisely determine the specific costs that are being recovered through annual fees. For example, the work papers indicate that several items dominate the contracting portion encompassed by the operating reactor annual fee. However, the work papers provide no information regarding the specific projects driving these contracting numbers, such as the issues being researched, the

type of information technology support needed, and the licensing actions anticipated. We encourage the NRC to continue adding detail to the work papers to allow licensees to discern exactly what work their annual fees are funding. (Exelon)

**Response:** ~~The NRC disagrees with the comment that the work papers contain insufficient detail with respect to which specific line items are being recovered through user fees and which are being recovered through annual fees.~~ Consistent with prior years, license fees are based on the NRC's budget formulation structure hierarchy of business lines, product lines, and products. The commenter is correct that the work papers do not distinguish these activities on the basis of whether these line items will be recovered through user or annual fees. However, distinguishing these activities would prove unduly burdensome for the NRC to perform this type of ~~calculation analysis~~ for every business line, product line, and product in its budget.

The NRC would not be able to provide specific information on contracts since it is proprietary in nature, but the NRC does provide contract amounts by product line in the CBJ (Congressional Budget Justification). However, as part of the fees transformation initiative, project managers will provide enhanced licensee outreach to increase awareness of general contract activities and costs.

No change was made to the final rule in response to this comment.

**Comment:** While the NRC provided a clear explanation of the difference between international cooperation and assistance activities and how fees are accounted for each, there continues to be a lack of transparency with the benefit provided to the regulated community. The proposed fee rule Table III, "Fee-Relief Activities", clearly identifies \$13.9 million for international assistance activities. However, to ascertain the international cooperation budgeted activities requires going through each product line to add the budgeted costs. Clear transparency of the cooperation activities budget and a better description of the specific activities and how they benefit the regulated community is needed. This request does not

question the overall value of the benefits of assistance and cooperation activities to the safety and security of the world and United States. The split between assistance and cooperation is difficult to ascertain without laborious work. (NEI, Exelon)

**Response:** The NRC agrees with the comment. In the final rule, the NRC will improve transparency for international cooperation by compiling all such costs in a table in the work papers, which should allow the split between assistance and cooperation to be more easily determined. As stated in the proposed rule, the amount of international activities that the NRC allocated to international fee relief is \$13.9 million, which includes international nuclear safety and radioactive source security assistance activities, as well as support for international conventions and treaties, and technical cooperation activities whose benefits range across several classes of licensees and therefore cannot be identified by fee class. The amount not included under international fee relief activities represents international resources that the NRC assigned to each mission-direct fee class in the work papers. Specifically, these resources represent international cooperation activities (rather than international assistance activities). These cooperation activities provide direct input to the NRC's regulations and the NRC's oversight of its licensees and, therefore, benefit a group of NRC licensees. For example, international cooperative activities involve sharing information, knowledge, and technical expertise with the NRC's international regulatory counterparts. These international cooperative activities enhance the NRC's regulatory programs by providing direct input into the NRC's regulation and oversight of its licensees. International cooperation activities also provide other benefits to NRC licensees, such as collaborative research that is relevant to the NRC's regulatory programs. The NRC continuously assesses and, where relevant, incorporates international operating experience and research insights into the NRC's domestic regulatory program. As an example of the relevance of international cooperation work to the NRC's nuclear safety mission, power reactor licensees benefit from international efforts to exchange

information on operational events, regulatory experience, and expertise on construction, startup, and the operation of nuclear power plants.

~~No change~~Changes ~~were~~as made to the final rule work papers in response to this comment.

**Comment:** While detailed calculations of the annual fee are provided, there is a lack of detail related to the basis behind 10 CFR pPart 170 fees. In the interest of transparency, NRC should provide the data or assumptions used to make these estimates. For example, historical information could be provided for average inspection hours for a licensee class, estimated number of staff hours for license reviews, and hours spent on pre-application activities for small modular and advanced reactors. This information would provide stakeholders with the ability to analyze the efficiency and effectiveness of NRC's review. (NEI, Exelon)

**Response:** The NRC estimates the amount of 10 CFR part 170 fees based on established fee methodology guidelines (42 FR 22149; May 2, 1977), which specified that the NRC has the authority to recover the full cost of providing services to identifiable beneficiaries. As in previous years, the NRC applied longstanding principles to calculate the 10 CFR part 170 estimates based on the analysis of financial data. The data analyzed to devise the 10 CFR part 170 estimate included: 1) four quarters of the most recent billing data (hourly rate invoice data); 2) actual contractual work charged (prior period data) to develop contract work estimates; and 3) the number of FTE hours charged multiplied by the NRC professional hourly rate. These factors, along with workload projections, are used by the NRC to determine the 10 CFR part 170 estimated charges. Because the fee calculation worksheets used to develop the 10 CFR part 170 estimates involve thousands of calculations, it would be impractical for the NRC to provide details on every calculation.

No change was made to the final rule in response to this comment.

### **C. Workload/Non-Mission-~~Direct~~ Resources**

**Comment:** The hourly rate remains very high especially in comparison to the hourly rates of consultants working for the uranium recovery industry. (WMA)

**Response:** To the extent the commenter believes that the NRC's hourly rate should be comparable to the hourly rate for uranium-recovery consultants, the NRC disagrees with this comment. All fees assessed to licensees and applicants by the NRC must conform to OBRA-90 and IOAA requirements, in contrast to industry consultants working for the uranium recovery industry. Under the IOAA, the NRC must recover its full costs of providing specific regulatory benefits to identifiable applicants and licensees. In so doing, the NRC establishes an hourly rate for its work. Consistent with the IOAA, the NRC determines its hourly rate by dividing the sum of recoverable budgeted resources for: (1) Mission-direct program salaries and benefits; (2) mission-indirect program support; and (3) agency support—which includes corporate support and the IG. The mission-direct FTE hours are the product of the mission-direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission-direct and fee-relief activities.

No change was made to the final rule in response to this comment.

**Comment:** Of a 2080 hour working year, for 2017 only 1,500 of those hours are deemed to be spent on mission-direct work which is considered to be an improvement over Fiscal Year 2016 when only 1,440 hours were deemed spent on mission-direct work. The remaining hours (the 580 hours in Fiscal Year 2016 spent on non-mission-direct work) are "... charged to annual leave, sick leave, holidays, training and general administration tasks."

The WMA considers the proportion of hours (28%) spent on non-mission-direct work to be excessive and that a much smaller portion of time should be devoted to non-mission-direct work. (WMA)

**Response:** The NRC uses an estimate of the number of direct hours per FTE to calculate the hourly rate used in 10 CFR part 170 billing. The OMB's Circular A-25, "User Charges," does not specifically address the number of hours to assume per FTE in calculating

fees, but does emphasize that agency fees should reflect the full cost of providing services to identifiable beneficiaries. In addition, Title V of the United States Code establishes holidays, annual leave and sick leave amounts government wide for all employees.

In the final fee rule for FY 2005 (70 FR 30526, May 26, 2005), the NRC revised its estimate of the number of mission-direct hours per FTE to use a realistic estimate based on time and labor data for program employees who perform activities directly associated with the programmatic mission of the NRC. The NRC periodically reviews time and labor data to assess changes in the average number of productive hours from year to year and determines a realistic estimate of direct hours per FTE based on the most recent data. The estimate does not include time for ~~administration~~administrative, training, and other activities a mission-direct program FTE may perform that, while relevant to consider for certain costing purposes, would more accurately be considered overhead rather than "mission-direct" time for purposes of calculating a rate per hour of direct activities. When the NRC calculates the fees required to recover the budget enacted by Congress, this estimate of mission-direct hours per FTE is used to calculate the hourly rate.

The estimate of 1,500 hours per FTE used in the fee rule calculation for FY 2017 was based on an analysis of actual time and labor data from FY 2016. Use of an updated, realistic estimate of mission-direct hours per FTE helps ensure that the hourly rate accurately reflects the current cost of providing 10 CFR part 170 services, allowing the NRC to more fully recover the costs of these services through 10 CFR part 170 fees.

No change was made to the final rule in response this comment.

#### **D. Decreasing Number of Licensees in Fee Class**

**Comment:** The FY 2017 proposed fee rule continues to provide fee relief for fuel cycle facilities. However, Page 8701 states that the fuel facilities fee class [annual fee] will be

adjusted in the final rule with the expected departure of a current licensee. The loss of this licensee has been known for over one year and represents approximately 5% of the total annual fees collected from fuel facilities. It is our expectation that NRC has appropriately planned for this license termination and will decrease the licensing and oversight resources needed and the overall budget in the fuel facilities business line, rather than force operating facilities to absorb these annual fees. Therefore, this closure should not result in an increased fee burden to the remaining licensees. (NEI, Exelon)

**Response:** The NRC removes licensees from the fuel facilities fee class after the licensee permanently ceases principal activities. The commenter is correct that the NRC was aware that the referenced licensee had informed the NRC that they were planning to cease principal activities. However, the licensee did not cease principal activities until late in the first quarter of fiscal year 2017, after the proposed fee rule had been issued. At that point, the licensee was officially placed in decommissioning status and will be assessed a prorated annual fee according to our regulations. The NRC strives to make continual organizational improvements to align the resources needed to support its regulatory activities. These improvements help mitigate the burden when regulating a fee class with a declining number of licensees. Notwithstanding, the policy of the agency remains that the portion of the annual fee not assessed to the licensee leaving the fee class will be distributed to the remaining fuel facilities licensees. However, the NRC will continue to analyze changes to workload, budget resources and the composition of fee classes to support a fair and equitable fee setting process.

#### **E. FY 2017 Congressional Appropriation**

**Comment:** The proposed FY 2017 fee rule, based on right sizing agency activities and additional re-baselining reductions, represents a move in the right direction by lowering excessive annual fees, some significantly, for a majority of licensees. Adopting a fee structure

based on FY 2016 spending levels would be a move backwards and would ignore the progress the agency has made to appropriately prioritize its work and staff size. Therefore, if the NRC receives a continuing resolution for the remainder of the year, the FY 2017 proposed rule should be considered a ceiling for NRC spending. (NEI, Exelon)

**Response:** OBRA-90 requires that the NRC collect approximately 90 percent of its budget authority through fees by the end of the fiscal year, and the NRC must set its fees in accordance with its budgetary resources as this practice ensures that NRC fees assessed bear a reasonable relationship to the cost of NRC services. [This rule is based upon the Consolidated Appropriations Act 2017 \(Public Law 115-31\) dated May 5, 2017.](#)

No change was made to the final rule in response to this comment.

## **F. Invoicing**

**Comment:** There have been some recent improvements regarding invoicing; however, problems remain. In addition, there is no predictability for budgeting purposes regarding the magnitude of these invoices in regards to the review of a given submittal. The uranium recovery industry needs, for budgeting purposes, to be able to estimate the total value of future review invoices for a given submittal. Members of the uranium recovery industry have no idea of the magnitude of the quarterly review invoices until they arrive and must be paid. This creates a difficult situation in the form of large, unanticipated expenses for uranium recovery operators. If the agency as part of its completeness review were to provide an approximate and non-binding estimate of cost to complete the review of a given submittal it would be very helpful to uranium recovery operators. (WMA)

**Response:** The NRC currently provides, by request, estimates of costs incurred on a biweekly basis to licensees. The estimates include all (10 CFR part 170) costs that accumulated for license fee billing during the previous NRC pay period. The estimates include

NRC staff names with associated number of hours worked as well as contractor names associated with contract costs, which offer licensees additional detail. These estimates may assist licensees in budget planning and preparing to receive their next quarterly invoice. Licensees may request to receive biweekly estimates by sending an e-mail to FEES.Resource@nrc.gov with docket number(s) and licensee e-mail address (es) to which the estimates should be sent. Additionally, project managers are being directed to discuss estimates with licensees on at least a bi-weekly basis. In addition, the uranium recovery staff have offered to meet with licensees and applicants on a quarterly basis to forecast upcoming workload so that licensees and applicants have an idea of the work that will be included on future invoices. Lastly, the NRC staff has posted on its public Web site estimates of the cost of major uranium recovery licensing actions. [For more information, please see our Licenses Fees Web site at https://www.nrc.gov/about-nrc/regulatory/licensing/fees.html.](https://www.nrc.gov/about-nrc/regulatory/licensing/fees.html)

No change was made to the final rule in response to this comment.

**Comment:** Exelon applauds the fee development process improvements that the NRC has thus far implemented. To that end, we encourage the NRC to continue striving for additional efficiency gains, such as electronic invoicing. The NRC should explore immediate, incremental steps towards electronic invoicing short of an entire system upgrade (which the NRC is not planning to implement until FY 2020). This could include, for example, automatically e-mailing copies of the paper invoices as soon as those invoices are mailed to the licensee. Even that small step would benefit licensees by providing more timely invoices. (Exelon)

**Response:** The NRC issues more than 5,000 invoices per year. Emailing invoices to licensees with the current information technology systems and configuration would be an intensive manual process requiring substantial resources. Given the current budget and constrained resources, the NRC is unable to support this recommendation in order to keep current resources focused on the improvement initiatives currently underway that include improving billing data, accuracy, and electronic [invoicing](#) ~~billing~~.

**Comment:** WMA continues to be concerned about the agency's invoicing process.

In its comments dated May 4, 2016 on the Request for Information - Fees Development and Communications– (Federal Register Volume 81, Number. 55 / Tuesday, March 22, 2016 / Notices) the WMA commented extensively on invoicing and concluded:

The WMA believes that a substantial problem with the agency's invoicing is the lack of predictability in the invoice amounts. This could be mitigated to some extent by flat fee invoicing for some items however for others, it would require that the agency prepare a nonbinding estimate of cost to complete the review. (WMA)

**Response:** As previously noted, licensees may request to receive biweekly estimates by sending an e-mail to FEES.Resource@nrc.gov with docket number(s) and licensee e-mail address(es) to which the estimates should be sent. Additionally, project managers are being directed to discuss estimates with licensees on at least a bi-weekly basis. Also, the NRC will explore how to display more detailed invoice information. It should be noted that contractor information in most cases is considered proprietary but we will work with our contractors to determine what information can be released.

Additionally, as directed in SRM-SECY-16-0097, "Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule", the NRC staff is exploring whether a flat fee structure could be established for routine licensing matters in the area of uranium recovery. In addition, staff is also evaluating the level of detail to be provided in invoices.

No change was made to the final rule in response to this comment.

**Comment:** The administrative change from the FY 2015 final fee rule to revise the assessment of administrative time for project managers by adding a 6% Project Manager/Resident Inspector allocation continues to be an excessive burden on licensees that double, and in some instances triple charge, for project manager work. This change intended to allocate overhead costs to each licensee based on direct time to each docket to ensure that a licensee's overhead costs are proportional to the regulatory services rendered by the NRC.

While we understand that this is a temporary charge, it continues to be a hidden extra fee for the licensee for non-direct work activities when these activities are already being fully billed as cost recovery items that project managers charge for work on a specific task. For example, some licensees have received invoices for project manager time on the same activity being triple charged under 1) Project management general work CACs; 2) technical CAC; and 3) the 6% Project Manager/Resident Inspector allocation. The 6% allocation on all NRC staff hours effectively increases the proposed hourly rate from \$267 to \$283. We advise consistency with regards to project manager ~~p~~Part 170 invoicing and awareness training for project managers of the 6% allocation to avoid multiple billings for the same work. (NEI, Exelon)

**Response:** As part of the fees transformation direction from the Commission, SRM-SECY-16-0097: Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule (ML16293A902) 2018-P #4—“the commission directed staff to r~~Review~~ the 2015 fee rule revised ~~the~~ methodology of charging overhead time for ~~p~~Project ~~m~~Managers and ~~R~~resident ~~i~~nspectors and modify it for more clarity”~~was established as an action~~. As part of this initiative, the NRC will consider alternate strategies for recovery of the resources allocated to administrative time for ~~P~~project ~~M~~anagers and ~~R~~resident ~~i~~nspectors and develop a new approach to be implemented by October 2019.

## G. Predictability

**Comment:** Industry appreciates the move in the right direction to publish the proposed FY 2017 fee rule earlier in the year. However, greater transparency and predictability in fee policy could be realized if the NRC published the proposed rule in the first quarter of the fiscal year and the final fee rule in the second quarter or early in the third quarter of the fiscal year. Accelerating the rulemaking schedule would not appear to be problematic for the NRC because the CBJ ~~[Congressional Budget Justification]~~ is publicly-released coinciding with transmittal of

the President's Budget Request to Congress (i.e., in February before the fiscal year begins), and the CBJ currently provides a fee recovery estimate. Early publication would allow licensees to plan, adjust budgets and manage cash flow. (NEI, Exelon)

**Response:** OBRA-90 requires that the NRC collect approximately 90 percent of its budget authority through fees by the end of the fiscal year. ~~and, the~~ The NRC must set its fees in accordance with its ~~own final~~ budget authority. Further, the annual appropriation cycle places additional constraints upon the NRC. ~~Because~~ Even though the NRC does not know the amount of fees it will need to collect until after it receives its annual appropriation from Congress, the NRC ~~cannot start~~ the Federal rulemaking process ~~until sometime~~ in the preceding summerfall, ~~usually after the first quarter.~~ The NRC believes that reliance on the most up-to-date financial data available in determining fees, ~~as opposed to using~~ the CBJ (adjusted for fact-of-life-changes) supports compliance with ~~ensures that the NRC meets~~ the requirements of OBRA-90. ~~as~~ This practice ensures that NRC fees assessed bear a reasonable relationship to the cost of NRC services. The NRC recognizes that the issuance of the rule may not coincide with budget cycles of industry; however, the NRC must promulgate a notice-and-comment rule based on the most accurate data available regarding the cost of NRC services in the context of the NRC's budget for a given fiscal year. For FY 2017, the NRC published the proposed fee rule in January; two months earlier than in FY 2016.

No change was made to the final rule in response to this comment.

## H. Miscellaneous

**Comment:** The Schedule of Materials Fees has several errors and omissions in the Program Codes listed for Special Nuclear Material.

- Category 1A(1)(a) should reference Program Code 21213, not 21130.
- Category 1A(2)(a) should include Program Code 21240.

- Category 1A(2)(b) should reference Program Code 21205.
- Category 1A(2)(c) should reference Program Codes 21130 and 31133. (KR)

**Response:** The NRC agrees with this comment. The Schedule of Materials Fees is corrected in this final rule to reflect the correct program codes with the following exception:

For Category 1A(2)(c), program code 31133 is not in our system. We assume the commenter meant program code 21133. The NRC added program code 21133 to Category 1A(2)(c).

**Comment:** We continue to be concerned that an excessive portion of the budget is funding corporate support and non-mission—direct activities. NRC has cumulatively reduced budgeted amounts for mission direct and mission indirect expenditures by 6.5%. That represents a move in the right direction from re-baselining agency activities. However, the budget for agency support increased by 3%. The proposed fee rule Table II, “Hourly Rate Calculation,” identifies \$340.5 million for mission direct program activities and \$136.7 million for mission indirect program support, which represents 60% of the total adjusted amount to be recovered through fees (\$801.4 million). Yet, the portion of the budget allocated to corporate support is \$324.2 million and represents 40% of budgeted resources. Agency support, which is a key factor in both the hourly rate and annual fee calculations, appears to be disproportionately large with respect to the resources allocated for mission direct and mission indirect activities. These overhead costs not only remain excessive compared to its peer agencies, but have also increased from FY 2016. In order to maintain credibility, NRC must focus their resources on mission critical activities that have a direct correlation with maintaining public health and safety and must reduce overhead costs. (NEI, Exelon)

**Response:** The NRC disagrees that the budget portion allocated to corporate support is disproportionate to resources allocated to mission activities. First, in calculating the percentage of mission-direct program activities, the commenter does not take into account all mission-direct resources contained in the total budget authority presented in the FY 2017 proposed fee rule.

The \$340.5 million referenced by the commenter includes only mission-direct salaries and benefits—it does not include the mission-direct amount for contract support, which is an additional \$125.3 million. Although not included within the hourly rate, mission-direct contract support is a significant component of the direct costs within the agency's total budget authority. Total mission-direct program activities in the proposed rule—including salaries, benefits, and contract support—equaled \$465.8 million. Further, the \$136.7 million that the NRC budgeted for mission-indirect program support in the proposed rule brings the NRC's total budgeted mission costs to \$602.5 million, or 65 percent of the total budget authority less excluded fee items. The remaining 35 percent for Agency Support in the proposed rule included resources for the NRC's Office of the Inspector General, which is not included when calculating corporate support.

No change was made to the final rule in response to this comment.

## **I. Comments on Matters Not Related to This Rulemaking**

Some comments suggested that the NRC implement a number of recommendations to streamline the regulatory process, ~~examine the proportion of non-mission-direct hours~~, review the changing technical guidance to licensees, and ~~seek congressional appropriations to cover the costs of hearing activities. Other commenters expressed their belief that uranium recovery sites should require the least amount of NRC~~consider risk when executing regulatory oversight ~~activities because they are the lowest risk sector of the nuclear fuel cycle.~~

All of these matters are outside the scope of this rulemaking. The primary purpose of the NRC's annual fee recovery rulemaking is to update the NRC's fee schedules to recover approximately 90 percent of the appropriations that the NRC received for the current fiscal year, and to make other necessary corrections or appropriate changes to specific aspects of the NRC's fee regulations in order to ensure compliance with OBRA-90, as amended.

The NRC takes very seriously the importance of examining and improving the efficiency of its operations and the prioritization of its regulatory activities. Recognizing the importance of continuous reexamination and improvement of the way the agency does business, the NRC has undertaken, and continues to undertake, a number of significant initiatives aimed at improving the efficiency of NRC operations and enhancing the agency's approach to regulating. Though comments addressing these issues may not be within the scope of this fee rulemaking, the NRC will consider this input in its future program operations.

SUBJECT: FY 2017 Final Fee Rule Public Comment Analysis Section

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DATE	5/1/2017	5/1/2017	5/4/2017	5/4/2017
OFFICE	NRO	RES	NMSS	OCIO
NAME	DHumerick*	RSpencer*	JJessie*	DCullison*
DATE	5/9/2017	5/1/2017	5/2/2017	5/10/2017
OFFICE	D/CFO	EDO	CFO	
NAME	MCMuessle	VMcCree	MEWylie	
DATE		<u>5/24/17</u>		

OFFICIAL RECORD COPY