

licensees to understand and comment on the appropriateness of these expenditures, and that the NRC should revise parts 170 and 171 to discretely allocate generic program costs to individual dockets in order to improve the visibility of management oversight and associated accountability of these programs.

Response. Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 94 percent of the NRC's FY 2003 budget authority, less the amounts appropriated from the NWF, from the various classes of licensees. The efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted full time equivalent (FTE) and contract costs at the planned accomplishment level for each agency activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

The NRC has also made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003" (February 2002), which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. This document is also available on the NRC public Web site at <http://www.nrc.gov/reading-rm.html>. The extensive information available to the public meets all legal requirements and the NRC believes it has provided the public with sufficient information on which to base their comments on the proposed fee rule. Additionally, the contacts listed in the proposed fee rule

were available during the public comment period to answer any questions that commenters had on the development of the proposed fees. No inquiries were received about the fee development process.

With regard to the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC notes that it has taken action to increase the amount recovered under part 170, consistent with existing Federal law and policy. For example, in FY 1998 the agency began charging part 170 fees for resident inspectors and in FY 1999 the agency started charging part 170 fees for project manager activities associated with oversight of the assigned license or plant. Additionally, in FY 2003 the NRC amended its regulations to allow the agency to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and utilization of mixed oxide fuel (MOX). The NRC assesses part 170 fees under the IOAA, and consistent with OMB Circular A-25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients can not be recovered under part 170.

The NRC clearly sets forth the components of these generic costs in its workpapers and how those costs are recovered through annual fees.

B. Specific Part 170 Issues

1. Increase in Hourly Rates

Comment. Several commenters raised concerns with the proposed increase to \$158 for the hourly rate for the materials program. One commenter stated that there seems to be no reason that the hourly rate for the materials program is higher than the hourly rate for reactors. This commenter also thought that the rates are out of line with rates paid by industry for safety professionals and managers.

Response. The NRC's hourly rates are based on budgeted costs and must be established at the revised levels each year to meet the fee recovery requirements. The hourly rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory, secretarial, and information technology support, as well

as general and administrative costs, such as rent, utilities, supplies, and payroll and human resources staffs. These hourly rates are not developed in relation to one another but are based on budgeted costs for the reactors program and the materials program. Since the budgeted costs are different for each program, different rates result. These rates do not necessarily track with private sector rates, nor should they be used as a benchmark for industry standards. Instead, these rates reflect the budgeted costs of the reactors and materials programs.

A major reason for the four percent increase in the hourly rate for the materials program is the salary and benefits increase resulting primarily from the Government-wide pay raise. While salary and benefits also increase similarly for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE for the reactor program. The hourly rates, coupled with the direct contract costs, recover through part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA. The revised hourly rates plus direct contract costs recover, through part 171 annual fees, the required amount of NRC's budgeted costs for activities not recovered through part 170 fees, as mandated by OBRA-90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. For part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. Project Manager Billing Issues

Comment. Several commenters expressed concern with the increase in charges for Project Manager (PM) time to uranium recovery licensees and other materials licensees. Some of these commenters would like clarification of the status of the NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) policy change that was implemented in July 2001, which states that a PM's costs are not billed to the licensee as part 170 fees if that PM spends 75 percent or less of his/her time in any two-week period on duties to support that licensee. Other commenters said that after an initial drop in part 170 charges for PM duties to uranium recovery licensees, these charges had increased recently even though duties related to the sites had not changed, and stated that PM time should not be charged to part 170 fees, whenever possible. Some commenters thought the Commission should reduce the impact of the hourly rate increase on