

per operating power reactor. The commenter argued that "power reactor licensees should not have to bear this ever increasing additional fee charge for NRC agency costs that are not related to the regulatory costs of these licensees. Accordingly, these costs should not be included in the user fee base to be recovered from power reactor licensees."

Response. The NRC is adopting in this final rule the allocation method in the proposed rule because it represents an equitable way to allocate the costs and most of the comments supported use of the revised methodology. As noted in the comments, on February 23, 1994, the NRC submitted its report to Congress on fees in compliance with the Energy Policy Act of 1992. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent, and eliminate the requirement that NRC assess 10 CFR Part 170 fees. Because the requested legislation has not been enacted, the NRC in this final rule will allocate the costs (approximately \$56 million) that have raised fairness and equity concerns among the broadest base of NRC licensees. The Commission will continue to discuss and work with the Congress to make fees more fair and equitable.

2. Streamline and Stabilize Fees

Comment. Commenters, for the most part, supported the proposal to stabilize fees by adjusting the annual fees starting in FY 1996 by the percentage change (decrease or increase) in the NRC's total budget. Commenters also supported the NRC's plan to reexamine this approach should there be a substantial change in the total NRC budget or in the magnitude of a specific budget allocation to a specific class of licensees. Commenters also were in agreement that the "flat" materials inspection fees of 10 CFR part 170 should be eliminated and the costs included in the 10 CFR Part 171 annual fees. Most commenters agreed that the proposed changes represent a simplification and streamlining of the fee-setting procedures and are necessary in order to eliminate the large swings in annual fees that have occurred in past years and to allow for greater predictability of fees. Other commenters indicated, however, that they are

concerned about the simple annual percentage change adjustment to future annual fees because there has been no resolution of certain long-standing concerns associated with the fairness and equity of NRC fees.

Response. The NRC is adopting in this final rule the proposed methodology to streamline and stabilize fees based on the comments received supporting the methodology. Although not a specific change in this rule, the NRC plans to adjust the annual fees only by the percentage change in NRC's total budget beginning in FY 1996. The NRC believes that this action will help stabilize and improve the predictability of fees. The fees established in this final rule will be used as the base annual fee in subsequent years and the percentage change (plus or minus) in the NRC total budget, adjusted to reflect changes in the total number of licensees paying fees and estimated collections from 10 CFR part 170 licensing and inspection fees, will be used to establish annual fees. However, the NRC will make modifications should there be a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. To streamline fees, the NRC is eliminating the materials "flat" inspection fees in 10 CFR part 170 by including the cost of inspections in certain materials licensees' 10 CFR part 171 annual fees.

3. Change the Methodology for Calculating the Professional Hourly Rate to Better Align the Budgeted Costs With the Major Classes of Licensees

Comment. All commenters responding to this proposed change supported the revised method of calculating hourly rates to separately, and more equitably, allocate the costs associated with the reactor and materials programs. Commenters believe that the new dual rate structure, which establishes different rates for reactor and materials reviews, is inherently fairer and more equitable to licensees. Most commenters were pleased that the rates for both the reactor and materials classes of applicants have been reduced as compared to FY 1994 and indicated that changing the method of calculating hourly rates is a step in the right direction towards providing a more reasonable relationship to the cost of providing regulatory services. Commenters supported the use of the "cost center" concept to identify and allocate the NRC budgeted resources to different types of major programs, namely reactor and material licensees, and indicated that this methodology is more consistent with Congressional intent that the NRC identify and

properly assess fees to the entities that utilize NRC resources and regulatory services.

Other commenters, however, indicated that while they appreciate the 13 percent reduction in the professional hourly rate for the materials program (from \$133 per hour to \$116 per hour), applying such a uniformly high rate for NRC staff cannot be justified. These commenters point out that the \$116 hourly rate equals or exceeds the hourly charges of senior consultants, principals, or project managers at major consulting firms and substantially exceeds the generally accepted rate for technical staff performing similar work in private industry. Commenters encouraged the NRC to continue examining its budget structure and cost allocation methods so that the hourly rate can be made consistent with and representative of comparable services performed by private industry. One commenter stated that the NRC has still not adequately explained the derivation of the hourly rate, aside from basing it on a presumed number of chargeable hours per full-time equivalent, or how it relates to the services provided. Another commenter stated that the hourly rates are arbitrary and do not reflect the costs of providing regulatory services to licensees.

Response. In this final rule, the NRC has established two professional hourly rates for FY 1995 which will be used to determine the 10 CFR Part 170 fees. A rate of \$123 per hour is established in § 170.20 for the reactor program and a second rate of \$116 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA-90. The rates reflect the NRC cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of \$123 and \$116 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (60 FR 14676; March 20, 1995) and the same section of this final rule. For example, Table III shows the budgeted costs and