



February 2017

# NUCLEAR REGULATORY COMMISSION

## Regulatory Fee- Setting Calculations Need Greater Transparency

# GAO Highlights

Highlights of [GAO-17-232](#), a report to congressional requesters

## Why GAO Did This Study

From 2005 to early 2010, NRC expected an increase in workload due to a projected large number of applications for new nuclear power plants, among other things, and received increased budget authority and hired additional staff. NRC is required by law to collect about 90 percent of its annual appropriation by assessing fees to the commercial nuclear industry it regulates, and as NRC's budget authority increased, so did its regulatory fees. By 2011, however, it had become clear that the projected growth had not materialized. NRC's budget and its regulatory fees, however, have declined little since 2010, and many licensees are confused by the process by which NRC sets its regulatory user fees.

GAO was asked to review NRC's fee-setting process. This report examines, among other things, the extent to which NRC explained its fee calculations in its fiscal year 2016 fee documentation, and challenges industry stakeholders have identified with NRC's fee-setting process. GAO reviewed NRC's fee rules and work papers, interviewed NRC staff and 13 industry stakeholders, and evaluated NRC's actions relative to criteria on issuing regulations and measuring performance.

## What GAO Recommends

GAO is recommending that NRC fully explain its fee calculations in its annual fee rule and set performance goals and measures for its project to increase the transparency and timeliness of its fee calculations. NRC generally agreed with these recommendations.

View [GAO-17-232](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov).

February 2017

## NUCLEAR REGULATORY COMMISSION

# Regulatory Fee-Setting Calculations Need Greater Transparency

## What GAO Found

The Nuclear Regulatory Commission's (NRC) fiscal year 2016 final fee rule and work papers contained information that licensees could use to understand how NRC calculated its fees, but this information did not fully explain the agency's fee calculations. In this and prior fee rules, NRC set two types of fees: service fees and annual fees. NRC established an hourly fee rate for service fees to recover the full cost of specific regulatory services, such as conducting inspections and performing licensing actions. NRC established annual fees to recover regulatory costs that are not otherwise recovered through service fees or are excluded from fee recovery by law. GAO found that NRC's final fee rule did not define key terms, use terms consistently, or provide key calculations, and included errors, all of which obscured NRC's calculations and limited industry stakeholders' ability to understand them. For example, GAO and some industry stakeholders that GAO interviewed could not determine how NRC calculated a key component of its fee-setting process without additional information from NRC staff. NRC's *Principles of Good Regulation*, which applies to NRC's fee-setting process, states that regulations should be coherent, logical, and practical, and that the regulations should be readily understood and easily applied, among other things. NRC's fee rule and supporting documents did not clearly present the information that stakeholders need in order to understand fee calculations and provide substantive comments to the agency. Until NRC clearly defines and consistently uses key terms, provides complete calculations and explanations for the fees, and ensures the accuracy of its fee rule and work papers, industry stakeholders' understanding of NRC's fee calculations may remain limited.

Industry stakeholders that GAO interviewed identified several challenges with NRC's fee-setting process, some of which NRC has plans to address, but its plans are missing key components. Specifically, industry stakeholders identified challenges that GAO organized into five categories: transparency, fairness, predictability and timeliness, billing, and workload and workforce. For example, one industry stakeholder GAO interviewed said that NRC's fee-setting process is not transparent and that, without more detailed information, the licensee cannot evaluate and comment on NRC's proposed fee rules or replicate NRC's calculations. NRC has initiated a project with the goals of increasing the transparency of its fee calculations and improving the timeliness with which it provides fee information. For example, for fiscal year 2017, NRC staff are planning to add a section to the agency's public website regarding frequently asked questions about user fees, and NRC is planning to publish its proposed and final fee rules earlier in the year than it has in previous years. However, NRC staff could not explain how they will know the extent to which their efforts are achieving their goals because they have not established goals for performance or a way to measure progress toward meeting these goals. Without setting performance goals and measures, NRC cannot effectively assess the extent to which its actions are improving transparency and timeliness.

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## Abbreviations

FTE	full-time-equivalent
GPRA	Government Performance and Results Act of 1993
IOAA	Independent Offices Appropriations Act of 1952
NRC	Nuclear Regulatory Commission
OBRA-90	Omnibus Budget Reconciliation Act of 1990
OMB	Office of Management and Budget

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February 2, 2017

Congressional Requesters

From 2005 to early 2010, the United States was preparing for a nuclear renaissance; that is, the commercial nuclear industry was expecting to construct new nuclear power plants and other nuclear-related facilities. This was aided by the passage of the Energy Policy Act of 2005, which included tax incentives that would favor additional nuclear energy development. As the agency responsible for regulating the commercial nuclear industry—including nuclear power plants and other civilian uses of radioactive material—through licensing, inspection, and enforcement of its regulations, the Nuclear Regulatory Commission (NRC) expected a substantial increase in workload due to a projected large number of applications for new nuclear power plants and interest in new reactor designs, among other things. In preparation for the anticipated increase in workload, NRC's budget authority grew from about \$669 million in fiscal year 2005 to about \$1.1 billion in fiscal year 2010.<sup>1</sup> Similarly, NRC's workforce grew from about 3,100 full-time-equivalent (FTE) employees to almost 4,000 FTEs over the same period.<sup>2</sup> NRC assesses regulatory user fees to companies that hold an NRC license, or licensees, as well as to license applicants, and is required by law to collect approximately 90 percent of its budget authority through these fees. To reach this amount, NRC assesses two types of regulatory user fees: service fees and annual fees.<sup>3</sup> As NRC's budget authority increased, so did its total regulatory user fees collections. For example, the total amount of fees that NRC was required to collect in fiscal year 2005 was about \$538 million, which

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<sup>1</sup>In 2015 constant dollars, NRC's fiscal year 2005 budget authority was about \$804.5 million and its fiscal year 2010 budget authority was about \$1.2 billion.

<sup>2</sup>FTEs reflect the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked by employees divided by the number of compensable hours applicable to each fiscal year. For a glossary of federal budgeting terms and definitions, see GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005).

<sup>3</sup>For purposes of this report, we use the term "regulatory user fees" to describe both types of fees that NRC assesses to licensees.

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increased to about \$911 million in 2010—an increase of about 69 percent.<sup>4</sup>

By 2011, however, it had become clear that the nuclear renaissance had not materialized for a variety of reasons, including low prices of natural gas and concerns about the safety of nuclear power plants. Additionally, concerns had been raised about the storage and disposal of nuclear waste generated by nuclear power plants. Yet NRC's budget authority and regulatory user fees have declined little since fiscal year 2010. Specifically, NRC's budget authority declined from about \$1.1 billion in fiscal year 2010 to about \$1.0 billion in fiscal year 2016—a decrease of about 6 percent.<sup>5</sup> Similarly, the total amount NRC needed to collect in fees from licensees decreased to \$883.4 million in 2016—a decrease of about 3 percent from 2010.<sup>6</sup> Industry stakeholders—licensees and industry organizations whose members include companies with NRC licenses, such as the Nuclear Energy Institute and the National Mining Association—have encountered challenges understanding NRC's fee-setting process.<sup>7</sup>

NRC is an independent agency established by the Energy Reorganization Act of 1974 to license and regulate civilian uses of nuclear materials in the United States for commercial, industrial, medical, and academic purposes.<sup>8</sup> Under the Atomic Energy Act of 1954, as amended, NRC is responsible for issuing licenses to commercial nuclear reactors and conducting oversight activities under such licenses to protect the health and safety of the public, among other things.<sup>9</sup> NRC is authorized to conduct inspections and investigations; enforce regulatory requirements by, among other things, issuing orders and imposing civil (monetary)

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<sup>4</sup>In 2015 constant dollars, the amount NRC was required to collect in fiscal year 2005 was about \$647 million, and in fiscal year 2010, it was about \$991.7 million—an increase of about 53 percent.

<sup>5</sup>In 2015 constant dollars, NRC's budget authority was about \$1.2 billion in fiscal year 2010 and about \$978.0 million in fiscal year 2016—a decrease of about 19 percent.

<sup>6</sup>In 2015 constant dollars, the amount NRC was required to collect in fiscal year 2016 was about \$872.7 million—a decrease of about 12 percent from fiscal year 2010.

<sup>7</sup>A nonindustry stakeholder we interviewed also found it challenging to understand NRC's fee-setting process.

<sup>8</sup>Pub. L. No. 93-438 (1974).

<sup>9</sup>Pub. L. No. 83-703 (1975).

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penalties; and revoke licenses. NRC is headed by a five-member Commission, with members appointed by the President and confirmed by the Senate; one Commissioner is designated by the President to serve as the Chair and official spokesperson of the Commission. NRC staff from headquarters and the four regional offices conduct the agency's regulatory development, licensing, operating experience, inspection, enforcement, and emergency response programs, among other responsibilities. NRC's Chief Financial Officer and her staff establish, maintain, and oversee the implementation and interpretation of the agency's regulatory user fee policies and regulations, among other responsibilities.

NRC updates its regulatory user fees annually through the rulemaking process. The rulemaking process by which agencies, including NRC, generally develop and issue regulations is described in the Administrative Procedure Act.<sup>10</sup> This process gives the public an opportunity to provide information on the potential effects of a rule and suggest alternatives for agencies to consider. In keeping with this process, NRC issues a proposed fee rule and final fee rule that are published in the *Federal Register*. NRC also prepares and makes available on its website work papers that provide more detailed information on the agency's fee calculations.

You asked us to review issues related to NRC's process for setting regulatory fees. This report examines (1) how NRC calculates its regulatory user fees and how its fee-setting process changed from 2010 through 2016, if at all; (2) the extent to which NRC explained its fee calculations in its fiscal year 2016 final fee rule; and (3) the challenges that industry stakeholders have identified with NRC's fee-setting process and the actions NRC has taken to address them.

For all three objectives, we reviewed relevant documents provided by NRC and applicable laws and regulations. We also interviewed NRC staff and non-federal stakeholders that have an interest in NRC's fees, including industry and nonindustry stakeholders. To determine how NRC calculates its fees and how its fee-setting process changed, if at all, from 2010 through 2016, we reviewed the requirements of the Independent Offices Appropriations Act of 1952 (IOAA)<sup>11</sup> and the Omnibus Budget

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<sup>10</sup>See 5 U.S.C. § 553.

<sup>11</sup>31 U.S.C. § 9701.

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Reconciliation Act of 1990, as amended (OBRA-90);<sup>12</sup> NRC's proposed and final fee rules for 2010 through 2016; and NRC's policies and guidance related to its fee-setting process. We also interviewed NRC staff in the Office of the Chief Financial Officer and Office of General Counsel. To determine the extent to which NRC explained its fee calculations in its fiscal year 2016 final fee rule, we examined NRC's final fee rule and associated work papers, as well as agency guidance on rulemaking. We also interviewed NRC staff in the Office of the Chief Financial Officer and nonfederal stakeholders, including licensees. To identify challenges, if any, that industry stakeholders have identified with NRC's fee-setting process and the actions, if any, NRC has taken to address them, we reviewed comments submitted to the *Federal Register* on NRC's fee rules for fiscal years 2015 and 2016 and NRC's responses, and developed a stratified nongeneralizable sample of 13 industry stakeholders and one nonindustry stakeholder. To select licensees for our sample of industry stakeholders, we used fee-collection data from NRC's Financial Accounting and Integrated Management Information System. We assessed the reliability of the data and found them to be sufficiently reliable for the purpose of selecting licensees to interview. For each of the nine fee classes, we selected the licensee that was assessed the highest total amount of combined service and annual fees from fiscal years 2011 to 2015. If a licensee was assessed the highest combined fee amount in more than one fee class, we selected the licensee that paid the second highest amount, so that no licensee was selected twice. In addition, we randomly selected small licensees based on data provided by NRC staff on small entity fee adjustments. We analyzed stakeholders' comments to identify key themes, which we attribute in this report to industry stakeholders, and grouped their comments into common categories. We interviewed NRC staff and reviewed related documentation to learn what actions, if any, the agency is taking to address these concerns, or their justification for not addressing a concern, if applicable. We compared NRC's actions to address stakeholders' challenges with NRC's guidance on rulemaking, the GPRA Modernization Act,<sup>13</sup> and *Standards for Internal*

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<sup>12</sup>42 U.S.C. § 2214.

<sup>13</sup>The performance planning and reporting framework was originally put into place by the Government Performance and Results Act of 1993 (GPRA) and was enhanced by the GPRA Modernization Act. Pub. L. No. 103-62 (1993) and Pub. L. No. 111-352 (2011).



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*Control in the Federal Government*, as applicable.<sup>14</sup> For more details on our scope and methodology, see appendix I.

We conducted this performance audit from January 2016 to February 2017, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

This section discusses the licensees regulated by NRC, the laws governing NRC's fee-setting authorities, the types of regulatory fees that NRC assesses, and NRC's fee-setting framework.

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## Regulated Licensees

The licensees regulated by NRC encompass a broad range of commercial uses of nuclear material. Specifically, NRC regulates commercial nuclear power plants; research, test, and training reactors; nuclear fuel cycle facilities; and the use of radioactive materials in medical, academic, and industrial settings. NRC also regulates the transport, storage, and disposal of radioactive materials and waste. For the purpose of setting service and annual fees, NRC established nine fee classes, and in some fee classes it established subgroups (see table 1). For example, NRC established a fee class for fuel facilities licensees and subgroups within this fee class for high-enriched uranium facilities, low-enriched uranium facilities, and others. In addition, NRC has agreements with 37 states under which the states assume regulatory responsibility for the use of certain nuclear materials used or possessed within their borders.

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<sup>14</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

**Table 1: Nuclear Regulatory Commission's Fee Classes**

Fee class	Description	Number of licensees subject to an annual fee in fiscal year 2016
Operating power reactors	Commercial nuclear power reactors that generate electricity	100
Spent fuel storage/reactor decommissioning	Storage of nuclear fuel after it is used and removed from a nuclear power reactor and the decommissioning or closure of operating power reactors	122
Research and test reactors	Nuclear reactors that are primarily used for research, training, and development.	4
Fuel facilities	Facilities that convert, enrich, or fabricate uranium into nuclear fuel	9
Uranium recovery	Extraction and concentration of natural uranium ore from the earth	9
Materials users	Activities that involve the use of nuclear materials, including medical and industrial applications	2,880
Transportation <sup>a</sup>	Transportation of spent nuclear fuel and other radioactive materials	0
Rare earth	Extraction of metals, heavy metals, and rare earth elements <sup>b</sup>	0
Import/export <sup>c</sup>	Import and export of certain nuclear materials and equipment to and from the United States	0

Source: GAO analysis of Nuclear Regulatory Commission's (NRC) data. | GAO-17-232

<sup>a</sup>NRC adds its costs for regulating transportation activities to the annual fee amount for each fee class and separately to the Department of Energy.

<sup>b</sup>Rare earth elements are used in many applications for their magnetic and other unique properties. These elements include the 17 chemical elements beginning with lanthanum, element number 57 in the periodic table, up to and including lutetium, element number 71, as well as yttrium and scandium, which have similar properties.

<sup>c</sup>According to NRC staff we interviewed, annual fees are not charged to import/export licensees because of the short life or temporary nature of these licenses.

## Laws Governing NRC's Fee-Setting Authorities

The design of regulatory user fees varies widely across the federal government, and Congress provides agencies with different degrees of flexibility in managing fee structures. Congress establishes the extent of agencies' flexibility to make fee design and implementation decisions under various statutes.<sup>15</sup> In the case of NRC, its authority to charge regulatory user fees is derived from two laws: IOAA and OBRA-90, as amended. IOAA provides broad authority to federal agencies, including NRC, to assess user fees or charges to identifiable beneficiaries through regulation. According to the statute, user fees assessed under IOAA

<sup>15</sup>For additional information on regulatory user fees see GAO, *Federal User Fees: Key Considerations for Designing and Implementing Regulatory Fees*, [GAO-15-718](#) (Washington, D.C.: Sept. 16, 2015).

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authority must be fair and based on (1) the costs incurred by the government, (2) the value of the service or benefit provided to the recipients, (3) public policy or interest served, and (4) other relevant factors. The Office of Management and Budget (OMB) provides guidance to executive branch agencies on establishing and collecting user fees assessed under the authority of IOAA and other statutes in Circular No. A-25, Revised, entitled *User Charges*.<sup>16</sup> OBRA-90 requires that NRC recover approximately 90 percent of its annual budget authority through fees assessed to licensees, excluding amounts appropriated for specific purposes.<sup>17</sup> The law requires that NRC first use its IOAA authority to collect service fees for specific services provided. However, because those fees do not equal 90 percent of NRC's budget authority, NRC also assesses annual fees. To the maximum extent practicable, the annual fees assessed must have a reasonable relationship to the cost of the regulatory services provided and may be based on how NRC allocates resources for regulating licensees or fee classes.<sup>18</sup> The remaining 10 percent of NRC's budget authority—known as fee relief activities—includes costs for such activities as international assistance, agreement state oversight, and scholarships and fellowships, which do not directly benefit existing licensees and are not intended to be recovered through fees.

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## Service Fees and Annual Fees

NRC assesses service fees under IOAA and annual fees under OBRA-90 through an annual rulemaking process.<sup>19</sup> Under IOAA authority, NRC assesses service fees in two ways: (1) an hourly fee rate and (2) flat service fees.<sup>20</sup> NRC establishes an hourly fee rate for service fees to

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<sup>16</sup>Office of Management and Budget, *User Charges*, OMB Circular No. A-25, Revised.

<sup>17</sup>42 U.S.C. § 2214. For fiscal year 2016, OBRA-90 and the 2016 Consolidated Appropriations Act exclude from fee recovery amounts appropriated (1) for NRC's responsibilities related to Department of Energy waste management activities for certain radioactive material resulting from the reprocessing of spent nuclear fuel, (2) for generic homeland security activities, (3) to NRC from the Nuclear Waste Fund for the fiscal year, and (4) for the Inspector General services for the Defense Nuclear Facilities Safety Board.

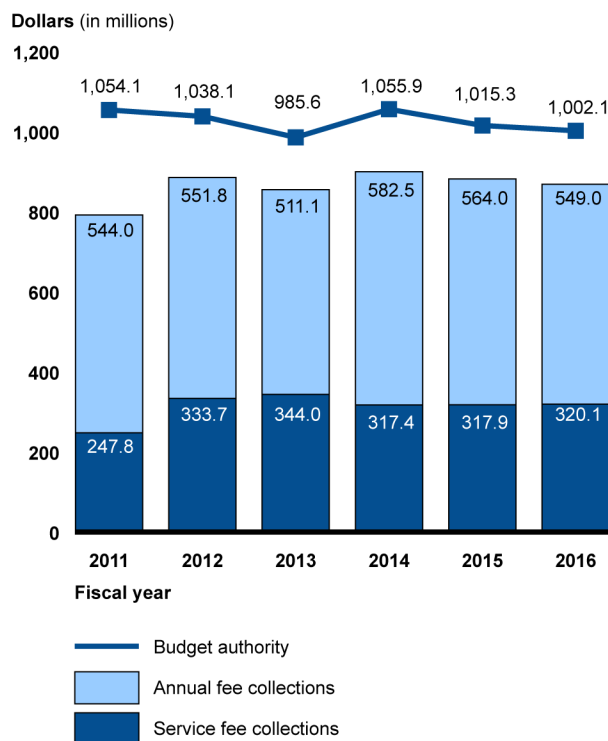
<sup>18</sup>OBRA-90 states that NRC must establish, by rule, a schedule of charges fairly and equitably allocating the amount of the annual fee among licensees. 42 U.S.C. § 2214(c)(3).

<sup>19</sup>The service fees are established under 10 C.F.R. Part 170, and the annual fees under 10 C.F.R. Part 171.

<sup>20</sup>For purposes of this report, we use the term service fees to refer to fees collected using both the hourly fee rate and flat service fees.

recover the full cost of specific regulatory services, such as conducting inspections and performing licensing actions. In situations where the cost of an activity will change very little from licensee to licensee, NRC has established flat service fees based on the hourly fee rate.<sup>21</sup> Under OBRA-90, NRC assesses annual fees to recover regulatory costs that are not otherwise recovered through service fees and that are not excluded from fee recovery. Figure 1 shows NRC's total budget authority and the amounts collected through service fees and annual fees for fiscal years 2011 through 2016.

**Figure 1: Nuclear Regulatory Commission's Fee Collections, Fiscal Years 2011 through 2016**



Source: GAO analysis of Nuclear Regulatory Commission's (NRC) data. | GAO-17-232

<sup>21</sup>Flat service fees are service fees set at a predetermined amount for the review of certain types of license applications, such as licenses to import or export nuclear material for civilian uses. NRC calculates flat service fees by multiplying the average number of hours needed to process each licensing action by the revised hourly fee rate. NRC estimates the amount of hours by reviewing the actual number of hours that staff spent performing these actions in the previous year.

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Note: These numbers are not adjusted for inflation. Data for fiscal year 2010 are not included because NRC could not verify the reliability of its service and annual fee data.

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## NRC's Fee-Setting Framework

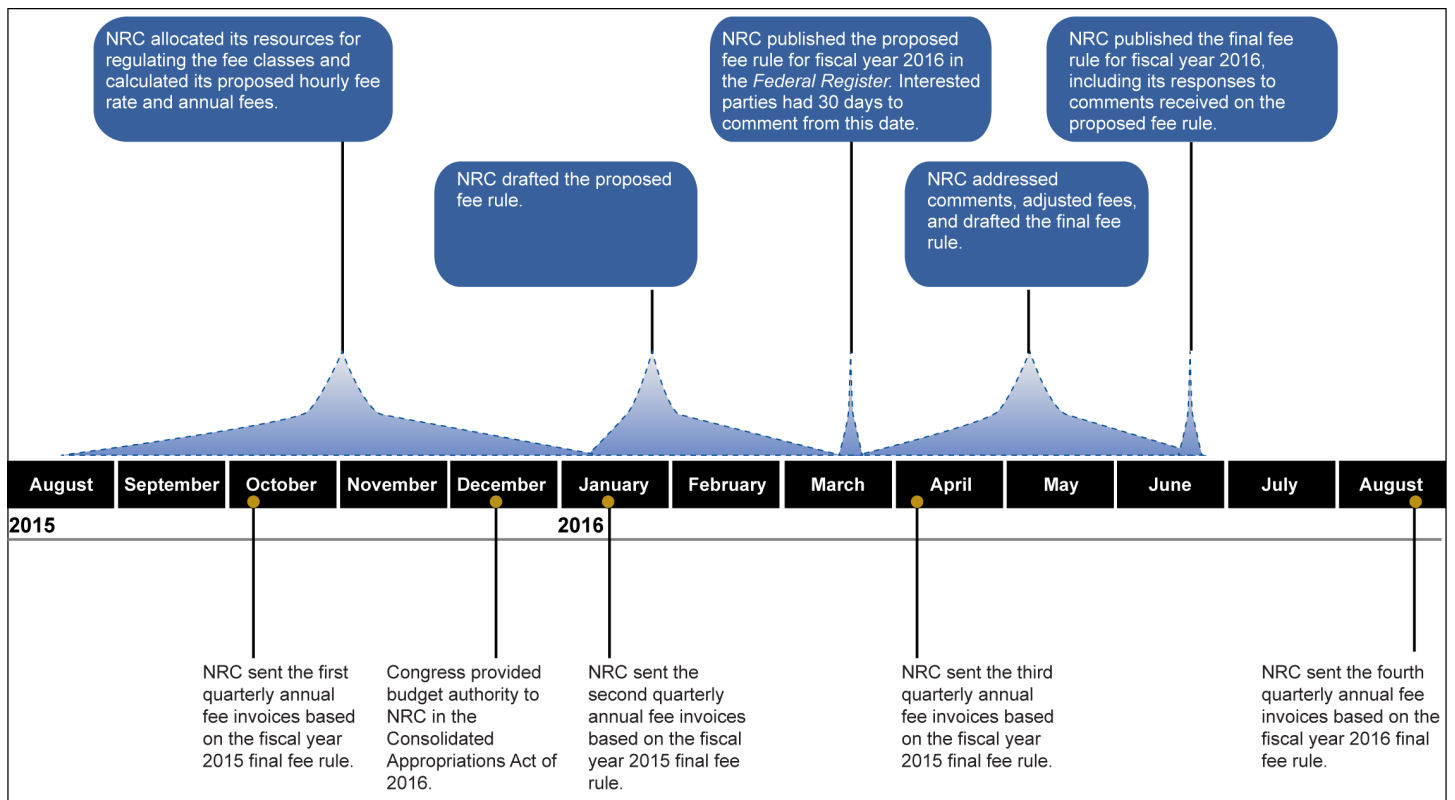
NRC sets its service fees and annual fees through the federal rulemaking process every year and reviews its flat service fees every other year. Under this process, NRC first drafts and then publishes a proposed fee rule in the *Federal Register*, following which interested parties have 30 days to comment. NRC develops the proposed fee rule by allocating its resources for regulating the fee classes and calculating its proposed hourly fee rate and annual fees. NRC bases its calculations for the proposed fee rule on its appropriation for the current fiscal year, if enacted. If the agency has not received its appropriation by the time it begins calculating fees, it bases these calculations on the President's budget. After the 30-day comment period, NRC adjusts its hourly fee rate for service fees and annual fees, as needed, and drafts a final fee rule. Finally, NRC publishes a final fee rule that includes its responses to comments received on the proposed fee rule. The final fee rule becomes effective 60 days after it is published. In fiscal year 2016, NRC based its proposed fee rule on the budget authority provided in the Consolidated Appropriations Act for fiscal year 2016, which was enacted in December of 2015.<sup>22</sup> In fiscal year 2016, NRC published a proposed fee rule in March and a final fee rule in June (see fig.2).<sup>23</sup>

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<sup>22</sup>Pub. L. No. 114-113 (2015).

<sup>23</sup>Nuclear Regulatory Commission, *Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016*, 81 Fed. Reg. 15457 (Mar. 23, 2016) and Nuclear Regulatory Commission, *Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016*; Final Rule, 81 Fed. Reg. 41171 (June 24, 2016).

**Figure 2: Timeline of the Nuclear Regulatory Commission's (NRC) Fee-Setting Process in Fiscal Year 2016**



Source: GAO analysis of Nuclear Regulatory Commission's (NRC) data. | GAO-17-232

NRC sends invoices to licensees to collect both service and annual fees. For service fees, NRC sends invoices in quarterly installments to recover the costs for work completed in the previous quarter up to the date of the invoice. For annual fees, NRC may send invoices to licensees at differing times depending on the amount of the bill. For annual fees in the amount of \$100,000 or more, NRC sends invoices quarterly in 25-percent installments; annual fees that are less than \$100,000 are billed to licensees in the full amount each year on the first day of the month in which NRC issued their original license. Payment is due within 30 days of the invoice date. According to NRC staff we interviewed, the first three quarterly annual fee invoice amounts are based on the final fee rule issued during the previous fiscal year. NRC adjusts the fourth quarterly annual fee invoice amount to reflect the difference in annual fee amounts collected during the first three quarters and the amount it must collect as established in the newly issued final fee rule. If the amounts NRC

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collected in the first three quarters exceed the amount of the revised annual fee, NRC refunds the overpayment.

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## **NRC Calculates Fees Based on Its Expected Regulatory Activities and Budget Authority Using a Process That Generally Did Not Change between Fiscal Years 2010 and 2016**

NRC sets its hourly fee rate for service fees based on the amount it expects to spend on regulatory work, and sets annual fees for licensees based on its budget authority, service fees it expects to collect, and other adjustments required by law. NRC's fee-setting process generally did not change from fiscal years 2010 through 2016, though the agency has planned changes to the process for fiscal year 2017.

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## **NRC Bases Its Regulatory User Fees on Its Expected Regulatory Activities and Budget Authority**

NRC sets service fees based on the overall amount it expects to spend during the fiscal year conducting regulatory activities and sets annual fees based on its budget authority, as adjusted by the service fees expected to be collected and amounts for certain activities specified by law. NRC sets service fees using an hourly fee rate. To determine this hourly fee rate, NRC estimates its amount of total resources for the fiscal year, which consists of the sum of resources in three categories: mission-direct program salaries and benefits, mission-indirect resources, and agency support resources.<sup>24</sup> In a public meeting held September 16, 2016, a high-ranking NRC official said the agency determines the amounts for these three categories through workload planning and budget formulation, revised to reflect recent changes in planned workload.<sup>25</sup> According to NRC staff, mission-direct program salaries and benefits are used to perform core work activities related to the agency's safety and security missions, such as regulating operating power reactors. Mission-indirect resources, such as travel-related activities, are used to support mission-

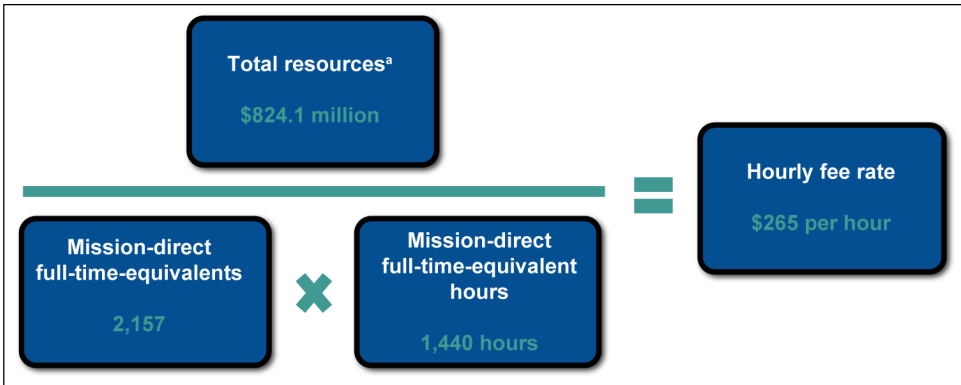
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<sup>24</sup>For fee-setting purposes, NRC excludes contractor costs related to mission-direct activities in determining total resources because these costs are billed as separate line items in licensees' service fee bills.

<sup>25</sup>We are currently reviewing NRC's strategic human capital management efforts and its budget formulation process and plan to issue separate reports later this year.

direct resources. Agency support resources, such as financial management, are used to broadly support the activities of the agency. NRC calculates its hourly fee rate for service fees by dividing the amount for total resources by the product of (1) mission-direct FTEs—the number of NRC technical staff, such as engineers and project managers—and (2) mission-direct FTE hours—the number of hours, on average, that mission-direct FTEs charged to mission-direct activities in a given year (see fig 3). NRC staff said that technical staff also charge time for other activities—such as time spent in training, on leave, or engaged in general administrative activities—that are excluded from the mission-direct FTE hours. In fiscal year 2016, NRC’s hourly fee rate for service fees was \$265 per hour.

**Figure 3: Nuclear Regulatory Commission’s Hourly Fee Rate Calculation for Service Fees in Fiscal Year 2016**



Source: GAO analysis of Nuclear Regulatory Commission’s (NRC) data. | GAO-17-232

<sup>a</sup>Total resources exclude mission-direct contractor costs because these costs are billed as separate line items in licensees’ service fee bills. According to NRC, total resources also exclude certain collections received by NRC that are not used by NRC, such as fees for processing Freedom of Information Act requests.

NRC’s mission-direct FTE hours increased from 1,420 in fiscal year 2015 to 1,440 in fiscal year 2016. According to NRC staff, multiple factors contribute to variations in mission-direct FTE hours from year-to-year. For example, according to NRC staff, mission-direct FTE hours may vary annually because they represent an average derived from the analysis of millions of hours charged by thousands of employees across hundreds of time codes. Similarly, NRC’s hourly fee rate for service fees has varied since fiscal year 2010 because increases or decreases in total resources, mission-direct FTE hours, or mission-direct FTEs cause the hourly fee rate for service fees to increase or decrease (see table 2). For example, the hourly fee rate for service fees decreased from \$268 per hour in fiscal



year 2015 to \$265 per hour in fiscal year 2016 because of an increase in mission-direct FTE hours and decreases in both total resources and mission-direct FTEs.<sup>26</sup>

**Table 2: Nuclear Regulatory Commission’s Hourly Fee Rate Factors from Fiscal Years 2010 through 2016**

<b>Factors</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Total resources (dollars in millions) <sup>a</sup>	809.8	837.4	848.0	839.6	866.2	856.0	824.1
Mission-direct full-time-equivalents	2,276	2,236	2,258	2,285	2,254	2,250	2,157
Mission-direct full-time-equivalent hours	1,371	1,371	1,371	1,351	1,375	1,420	1,440
Hourly fee rate (dollars)	259	273	274	272	279	268	265

Source: GAO analysis of Nuclear Regulatory Commission’s (NRC) data. | GAO-17-232

Note: These numbers are not adjusted for inflation.

<sup>a</sup>Total resources exclude mission-direct contractor costs because these costs are billed as separate line items in licensees’ service fee bills. According to NRC, total resources also exclude certain collections received by NRC that are not used by NRC, such as fees for processing Freedom of Information Act requests.

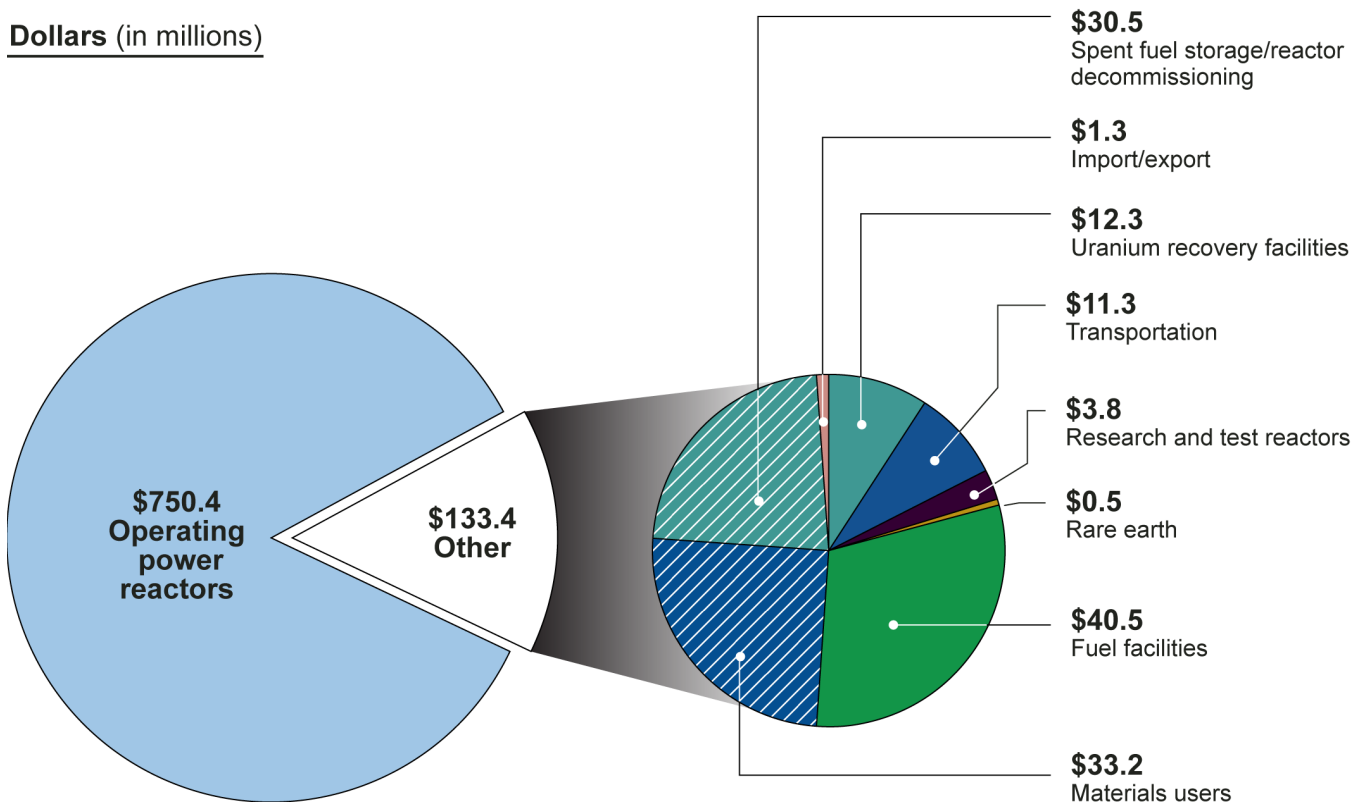
After calculating its hourly fee rate for service fees, NRC estimates the total it will collect in service fees and subtracts this amount from its budget authority and makes other adjustments required by law to determine the amount it will collect in annual fees. To determine the total in annual fees it will collect from each fee class, NRC subtracts the estimated service fee collections from the resources it has budgeted for each fee class and makes other adjustments as described in appendix II. NRC bases service fee collection estimates on historical data, including billing data, contractor costs, and the number of FTE hours charged. NRC staff said that in fiscal year 2016 and prior years, the billing data that NRC used in the proposed fee rule consisted of one-quarter current fiscal year billing data and three-quarters prior year billing data, and the billing data used in the final fee rule consisted of three-quarters current year billing data and one-quarter prior year billing data. NRC adjusts its service fee collection estimate based on workload projections and then multiplies the resulting amount by the new hourly fee rate to determine total service fee collection estimates for the fiscal year. NRC has nine fee classes, some of which include subgroups, and assesses different annual fee amounts

<sup>26</sup>These numbers are not adjusted for inflation.

under OBRA-90 based on the fee class or subgroup to which licensees belong. For example, NRC's fee class for fuel facility licensees includes subgroups for high-enriched uranium facilities, low-enriched uranium facilities, and other facilities. Figure 4 shows the resources NRC allocated for regulating each fee class under its fiscal year 2016 final fee rule.

**Figure 4: Nuclear Regulatory Commission's Resources Allocated for Regulating Each Fee Class in Fiscal Year 2016**

Dollars (in millions)



Source: GAO analysis of Nuclear Regulatory Commission's (NRC) data. | GAO-17-232

Note: The operating power reactors fee class refers to commercial power reactors that generate electricity and also includes new reactor licensing and oversight. The spent fuel storage/reactor decommissioning fee class refers to storage of nuclear fuel after it is used and removed from a nuclear power reactor and the closure of operating power reactors. The import/export fee class refers to the import or export of certain nuclear materials and equipment. The Uranium recovery fee class refers to extraction and concentration of natural uranium ore. The transportation fee class refers to the transport of radioactive materials, such as spent fuel. The research and test reactors fee class refers to nuclear reactors that are primarily used for research, training, and development. The rare earth fee class refers to extraction of metals, heavy metals, and rare earth elements. The fuel facilities fee class refers to facilities that convert, enrich, or fabricate uranium into nuclear fuel. The materials users fee class refers to activities that involve the use of nuclear materials, such as industrial applications.

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## NRC's Fee-Setting Process Generally Did Not Change from Fiscal Years 2010 through 2016, but NRC Is Planning Changes in Its Process for Fiscal Year 2017

NRC's methods for calculating its hourly fee rate and annual fees generally did not change from fiscal years 2010 through 2016. Since fiscal year 2010, NRC has made a series of budgetary changes, but these changes did not affect the agency's fee-setting process. Beginning in fiscal year 2011, as part of an effort to make its budget more transparent, NRC reclassified a portion of mission-indirect resources as agency support resources. In fiscal year 2015, a consultant hired by NRC reviewed the agency's budget structure and found that other agencies did not classify resources in the same way as NRC. As a result of this review, beginning in fiscal year 2016, NRC reversed the changes it had made in fiscal year 2011 and reclassified a portion of its agency support resources as mission-indirect resources. Because NRC includes the total resources—the sum of mission-direct, mission-indirect, and agency support resources—in the calculation of its hourly fee rate for service fees, reclassifying resources within these three categories did not affect the agency's fee-setting process.

In fiscal year 2016, NRC changed its policy for how it determines fees associated with work it performs when collecting and providing documents or providing oral testimony in depositions or before an administrative or judicial tribunal.<sup>27</sup> Prior to fiscal year 2016, NRC recovered costs associated with these requests through annual fees assessed to all licensees. In fiscal year 2016, NRC began assessing service fees to requesters of such information to recover the costs associated with their information requests once staff time to address the request exceeded 50 hours. In its fiscal year 2016 final fee rule, NRC stated it had made this change because, when responding to these information requests, NRC is bestowing a benefit on a private litigant that is not shared by other members of society. NRC staff said that the agency does not receive these kinds of information requests very often and that such requests would not likely affect total fee amounts assessed to licensees.

NRC is planning to implement changes to its fee-setting process. Beginning in fiscal year 2017, NRC plans to publish its proposed and final fee rules earlier than in previous years to enable licensees to factor information about service fees and annual fees into their business plans. For fiscal years 2015 and 2016, NRC published the proposed and final fee rules in the *Federal Register* in March and June, respectively. As of

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<sup>27</sup>81 Fed. Reg. 41171.

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August 2016, NRC estimated it would publish its proposed fee rule for fiscal year 2017 on January 30, 2017—about 2 months earlier than in previous years—and publish its final fee rule on May 30, 2017—about 1 month earlier than in previous years. To facilitate the agency’s ability to publish rules earlier in the year, NRC staff said they plan to use more prior year data to develop their service fee collections estimate for the proposed fee rule. For fiscal year 2017, NRC staff said they plan to base proposed fee rule service fee collection estimates on four quarters of prior year data and calculate final fee rule service fee collection estimates based on two quarters of current year data and two quarters of prior year data. At this time, the extent to which NRC’s actions will affect fee amounts is unclear.

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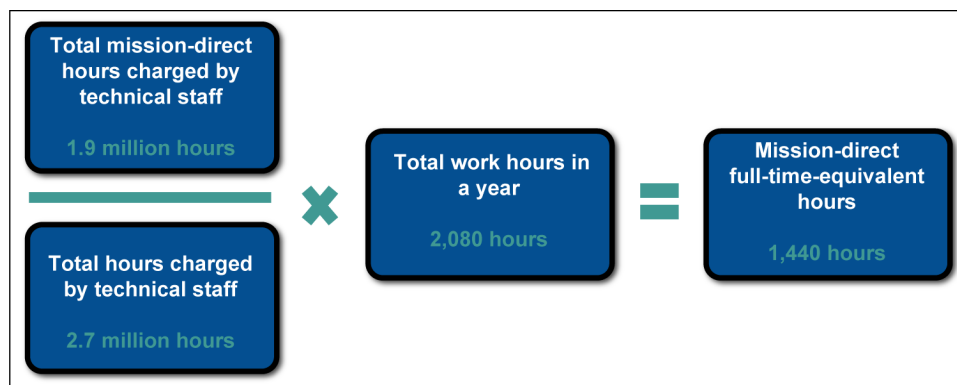
## NRC’s Fiscal Year 2016 Final Fee Rule Did Not Fully Explain the Agency’s Fee Calculations

NRC’s fiscal year 2016 final fee rule contained information that licensees could use to understand how NRC calculated its fees, but we identified four ways in which this information did not fully explain the agency’s fee calculations. We found that NRC’s fiscal year 2016 final fee rule and work papers contained information such as summary tables showing the calculation of total fee collection amounts, the hourly fee rate, and the calculation of annual fees for each fee class, among other information. However, these documents did not define key terms, did not use terms consistently, did not provide a key calculation, and contained errors, all of which obscured fee calculations and limited stakeholders’ ability to understand them. Specifically, NRC’s fiscal year 2016 fee rule and work papers:

- **Did not define key terms.** NRC did not define the terms “mission-direct,” “mission-indirect,” and “agency support resources” and did not provide descriptions of activities included under each of these categories. As discussed previously, these are key factors used to calculate NRC’s hourly fee rate. Specifically, in its fiscal year 2016 final fee rule work papers, NRC included tables of budgeted mission-direct resources and, for the first time, tables of budgeted agency support and mission-indirect resources. However, NRC did not provide descriptions of the activities included under each type of resource or describe how this information was used to calculate mission-direct, mission-indirect, and agency support resources. Without such definitions and descriptions, we could not fully understand the calculation of these resources. NRC staff told us that they plan to define these terms in the fiscal year 2017 fee rule and its regulations in fiscal year 2018, in part because of our review.

- **Did not use terms consistently.** In its fee rule and work papers, NRC referred to “mission-direct FTE hours” as “estimated annual direct hours per staff,” “mission-direct FTE hours worked annually,” and “annual direct hours worked per direct FTE,” among other variations. Inconsistent terminology made it difficult to understand NRC’s explanations of fee calculations.
- **Did not provide a key calculation.** NRC did not provide its calculation of mission-direct FTE hours. Instead, NRC’s work papers stated that it “reviewed data from its time and labor system to determine that 1,440 hours is the best estimate of direct hours worked annually per direct FTE.” However, NRC did not explain how it determined this estimate. NRC staff told us they calculated the number of mission-direct FTE hours used in the fiscal year 2016 final fee rule—1,440 hours—by dividing total mission-direct hours charged by technical staff—about 1.9 million hours—by total hours charged by technical staff—about 2.7 million hours—and then multiplying this amount by the total work hours in a year—2,080 hours (see fig. 5).<sup>28</sup>

**Figure 5: Calculation of the Nuclear Regulatory Commission’s Mission-Direct Full-Time-Equivalent Hours in Fiscal Year 2016**



Source: GAO analysis of Nuclear Regulatory Commission’s (NRC) data. | GAO-17-232

Note: Using the exact mission-direct hours charged by technical staff (1,855,834 hours) and total hours charged by technical staff (2,693,016 hours) that NRC staff provided to us to calculate mission direct FTE hours results in about 1,433 hours. NRC staff said that they rounded this up to 1,440 hours.

<sup>28</sup>Using the exact mission-direct hours charged by technical staff (1,855,834 hours) and total hours charged by technical staff (2,693,016 hours) that NRC staff provided to us to calculate mission direct FTE hours results in about 1,433 hours. NRC staff said that they rounded this up to 1,440 hours.

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- **Contained errors.** NRC omitted part of its calculation of the hourly fee rate—mission-direct FTE multiplied by mission-direct FTE hours—in its explanation in its fiscal year 2016 final fee rule. Additionally, NRC’s fiscal year 2016 final fee rule attempted to describe the calculation for its mission-direct FTE hours but instead erroneously described it as the calculation for “FTE converted to hours.”<sup>29</sup> Specifically, the fee rule states, “The mission-direct FTE hours are the product of the mission-direct FTE multiplied by the estimated annual hours per direct FTE.” NRC actually calculates mission-direct FTE hours as described in figure 5. Similarly, NRC erroneously used “mission-direct FTE hours” instead of “FTE converted to hours” in its explanation of the hourly fee rate calculation in its fiscal year 2016 work papers.

NRC’s *Principles of Good Regulation* state that regulations should be coherent, logical, and practical; that there should be a clear nexus between regulations and agency goals and objectives whether explicitly or implicitly stated; and that the regulations should be readily understood and easily applied.<sup>30</sup> Additionally, under the *Standards for Internal Control in the Federal Government*, management is to externally communicate the necessary quality information to achieve the entity’s objectives.<sup>31</sup> NRC’s fee rule and work papers did not clearly present the information that stakeholders need in order to understand fee calculations and provide substantive comments to the agency because these documents did not define key terms, did not consistently use terms, did not provide key calculations, and contained errors. As a result, we and some industry stakeholders that we interviewed could not determine how NRC calculated its mission-direct FTE hours without additional information from NRC staff. Without NRC clearly defining and consistently using key terms, providing complete calculations and explanations for its fees, and ensuring the accuracy of its fee rule and work papers, stakeholders’ understanding of NRC’s fee calculations may remain limited.

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<sup>29</sup>Mission-direct FTE multiplied by mission-direct FTE hours is known as FTE converted to hours.

<sup>30</sup>Nuclear Regulatory Commission, *Principles of Good Regulation*, Accessed July 25, 2016, <http://www.nrc.gov/about-nrc/values.html#values>.

<sup>31</sup>[GAO-14-704G](#).

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## Industry Stakeholders Identified Several Challenges Related to NRC's Fee-Setting Process; NRC Has Plans to Address Some Challenges, but Its Plans Are Incomplete

Industry stakeholders have identified challenges related to NRC's fee-setting process in five areas. NRC has started to implement plans to address some of the challenges, but its plans are incomplete because they are missing key components.

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### Industry Stakeholders Identified Several Challenges with NRC's Fee-Setting Process, Some of Which NRC Has Plans to Address

Industry stakeholders we interviewed identified several challenges they have experienced with NRC's fee-setting process, which we organized into five categories: (1) transparency, (2) fairness, (3) predictability and timeliness, (4) billing, and (5) workload and workforce. NRC has started to implement plans to address some of the challenges.

#### Transparency

Most industry stakeholders we interviewed told us that NRC's fee-setting process is not transparent and that additional information is needed to understand the agency's hourly fee rate and annual fee calculations. For example, one industry stakeholder said that it did not understand how the fees relate to NRC's budget, so it could not verify if the fees are appropriate. Similarly, another industry stakeholder told us that it could not evaluate and comment on NRC's proposed fee rules because there was not enough detail in the fee rule to replicate NRC's calculations. Some industry stakeholders said that NRC's work papers supporting the fee calculations were too cumbersome or too complicated to understand.

In addition, some industry stakeholders told us that the fee-setting process would be more transparent if they knew how NRC used their fees. Two industry stakeholders, for example, said that determining what their fees pay for is difficult because NRC does not specify which costs associated with specific regulatory activities are recovered through service fees and which are recovered through annual fees. According to NRC staff, the agency's current budgeting system is not designed to provide information on which budget items are recovered specifically

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through service fees and which are recovered through annual fees. To address this challenge, according to NRC staff, the agency is trying to determine if the system can be modified to do so.

## Fairness

Several industry stakeholders said that NRC's fee-setting process does not fairly set fees for licensees because they are not based on risk. For example, two industry stakeholders said that the fees assessed to their fee class do not reflect its low safety risk, meaning fee classes that are higher risk should pay higher fees than lower risk fee classes. Similarly, another industry stakeholder told us that it favors a risk-based fee for licensees in the same fee class, whereby licensees with few safety problems would be charged less than licensees with poorer safety performance. For licensing actions, NRC staff told us that NRC considers the number and types of licensing actions expected during the upcoming year when creating its budget. For NRC's work related to nuclear material safety and safeguards, NRC staff said that they consider the risk of licensees' activities, as well as operating experience, in allocating resources. NRC staff also told us that inspection procedures are maintained in a manner that focuses inspections on the high-risk systems, structures, and components.

A second issue that some industry stakeholders raised as being potentially unfair is how NRC reallocates annual fees when a licensee leaves a fee class in the middle of a fiscal year. Two industry stakeholders we interviewed noted that as the number of licensees in a fee class decreases, the annual fee for the remaining licensees increases—that is, when a licensee terminates its license in the middle of the fiscal year, the amount of uncollected annual fees from that licensee is reallocated and collected from the remaining licensees. We spoke to NRC staff about this issue, and they explained that the agency is still required to collect the necessary budget authority for that fiscal year. Going forward, however, NRC staff said that as the workload decreases, NRC's budgeted resources for that fee class should decrease, which would result in decreased fees. NRC responded to a similar comment from a stakeholder on its fiscal year 2016 fee rule, stating that NRC makes continual organizational improvements to align its resources to support its regulatory activities.

## Timeliness and Predictability

Several industry stakeholders we interviewed said they have experienced challenges with the timeliness and predictability of NRC's fee rule, and receiving adequate cost and schedule estimates for work, all of which affect the fees that licensees must pay to NRC. More specifically, several industry stakeholders we interviewed cited challenges with the



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unpredictability of the fourth-quarter annual fee and the timing of NRC's fee rule. For example, one industry stakeholder said that developing the company's annual budget is difficult to do when the company receives a bill from NRC in August that is larger than that of the previous three quarters. As described earlier, NRC adjusts the fourth-quarter invoice amount to reflect the difference in annual fee amounts collected during the first three quarters and the amount it must collect as established in the newly issued final fee rule. If the company knew in advance what the last payment would be, according to this industry stakeholder, it could budget for the increase. Similarly, one licensee stated that it would be better if NRC's annual fee rule were finalized earlier in the year because under the current timeline, the company has a minimal amount of time to adjust its budget. According to this licensee, its fourth-quarter fees in 2015 and 2016 went up about 18 percent, compared with the fees of the previous three quarters. This level of increase can be very challenging to pay, according to this licensee, and it can be even more difficult when the company has not planned for the increased fee. We found that the fourth-quarter payment for annual fees has been significantly higher than the payments for the first three quarters for some fee classes or subgroups within fee classes, while other fee classes experienced large decreases. For example, in fiscal year 2015, the fourth-quarter payment for one of the subgroups in the fuel facilities fee class increased by almost \$1.3 million (72 percent), from about \$1.8 million per quarter for the first three quarters to about \$3.1 million in the fourth quarter. That same fiscal year, however, the fourth-quarter payment for the uranium recovery fee class decreased from about \$200,000 per quarter for the first three quarters to about \$55,000 in the fourth quarter—a decrease of about 73 percent. According to NRC staff, the fourth-quarter payments can change—increase or decrease—as a result of several factors, including NRC's appropriations, which change from year to year, and a change in the number of licensees in a fee class.

NRC is aware of the challenges that licensees have with the timeliness of the fee rule, and, although it rejected some recommendations from industry, it has planned some changes in fiscal year 2017 to address the timeliness issue. According to NRC staff, licensees have requested that estimates of future year annual fees be submitted to industry. NRC disagreed with this practice because preliminary estimates of fees submitted to industry would be subject to change throughout the budget request and formulation process. According to NRC, since OBRA-90 requires NRC to recover about 90 percent of its annual budget authority each year, agency estimates of fees provided to industry could be inaccurate until Congress approves NRC's annual appropriation. Yet

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NRC's fiscal year 2017 congressional budget justification—submitted to Congress in February 2016—does provide estimates of the total amount of service and annual fees that it would collect based on its requested appropriation. NRC staff said that these estimates are determined using percentages from previous years. However, they said that providing more detail, such as estimated annual fees for fee classes or subgroups of fee classes, is too complex and time-consuming to calculate for its budget justification. As described earlier, NRC estimated it will publish its proposed and final fee rules for fiscal year 2017 earlier than in previous years, but it is not clear the extent to which this will address stakeholders' challenges with timeliness.

In addition to the challenges with the timeliness of the fee rules, several industry stakeholders noted challenges with predictability of costs because NRC does not provide cost estimates for regulatory activities for which licensees will be charged, including estimates of the fee and number of hours needed to complete the work. For example, one licensee said that NRC does not provide licensees any cost or time estimates associated with the regulatory activities that are billed to licensees as service fees. According to this licensee, NRC staff seem to charge time to companies for work performed, but the costs are not consistent and sometimes seem too high. Another industry stakeholder told us that it takes too long—up to a few months—to receive cost estimates from NRC. According to this licensee, when it questioned NRC about the estimated number of hours per week, NRC lowered the estimated number of hours, which made this licensee question the accuracy of NRC's cost estimates. One industry stakeholder pointed out that licensees cannot project what work NRC will perform or the associated costs, which would help the company plan its budget. NRC staff said they are aware of some licensees having challenges with NRC's work estimates but believe these challenges are not experienced by all licensees. NRC staff also said that they have considered licensees' recommendation for using more flat service fees to address this challenge of predictability. NRC is planning to take two actions to provide more information to licensees: (1) provide data on the cost of various licensing actions to the licensees for both operating power reactors and materials users fee classes and (2) develop estimates of costs based on level of effort for similar actions in the past and publicly communicate these generic estimates or ranges of fees for new types of work. Additionally, the Commission has directed NRC staff to develop a voluntary pilot initiative to explore whether a flat fee structure could be established for routine licensing matters in the area of uranium recovery. According to NRC staff, the agency assesses a flat service fee

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in situations where the cost of an activity will change very little from licensee to licensee.

In response to recommendations from NRC's Project Aim, an initiative to help the agency adjust to changes in the nuclear industry resulting in fewer new nuclear power plants and earlier decommissioning of some of the existing plants,<sup>32</sup> NRC are assessing alternative methods of setting fees. These alternatives include determining whether licensees in the materials users fee class should continue to be assessed flat service fees, and whether the agency should expand the use of flat service fees to other license categories, regulatory activities, and applicants in order to provide a simpler and more predictable billing process. According to NRC staff, the agency will be collecting data, analyzing the data, and then making a recommendation to the Commission on this issue by fiscal year 2020.

## Billing

Several industry stakeholders we interviewed told us that NRC's invoices do not include sufficient information to identify charges for specific work activities completed by NRC. For instance, several industry stakeholders told us that service fees on an invoice are presented as a single, total amount, so that a licensee cannot verify if NRC's fee matches the licensee's own records. Quarterly invoices for service fees contain the licensee name, an NRC activity code or inspection code, a short description of the activity, pay period end date, regular hours worked, nonregular hours worked (e.g., overtime), hourly billable rate, and the total amount charged each pay period. NRC staff said that they have received comments from licensees who want more detail in the quarterly invoices. In response, NRC has increased the amount of space on invoices for the description of the fee activity from 60 characters to 120 characters to better describe the work that was performed, but it is too early to tell whether this change will address concerns.

Another challenge identified with NRC's billing is the amount of time licensees have to pay the charges. One industry stakeholder said that NRC mails invoices to licensees and then licensees have 30 days from the day the invoices were mailed to pay the bills before they are assessed

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<sup>32</sup>According to NRC officials, Project Aim was a one-time effort to develop a framework intended to, among other things, help the agency adjust its size in response to changes in the nuclear industry. Project Aim resulted in the development of 19 implementation tasks that represent a broad array of activities that could be used as a framework for agency transformation.

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a penalty. According to this licensee, however, by the time the invoice is received in the mail, there are fewer than 30 days remaining to pay it, which can be a challenge for this licensee because of its internal processes for paying bills. According to NRC staff, they understand licensees' challenges with the billing system and believe that switching to an online bill payment system may help address this challenge. An October 2016 memo from the Commission to NRC staff stated that NRC staff should examine opportunities to accelerate the transition to an electronic billing system and look for opportunities to enhance the level of detail contained in the invoices. NRC staff said that they are researching these issues.

## Workload and Workforce

Some industry stakeholders told us that they believe NRC's costs seem too high or that licensing reviews take too much time to complete, which result in higher fees for licensees. For example, three industry stakeholders we interviewed said that NRC's costs seem too high for the work NRC performs. One licensee noted that there seems to be a mismatch between the activities in NRC's budget and the activities staff actually perform. Regarding license reviews, one licensee said that NRC does not notify licensees about its progress in completing licensing actions and is not accountable for staying on schedule. NRC staff explained that licensing reviews for operating reactor licensees took more time to complete following the events at the Fukushima Dai-ichi power plant in Japan because staff were redirected to address lessons learned from that event. For example, NRC staff reviewed licensees' safety enhancements implemented at nuclear power plants in response to Fukushima Dai-ichi lessons learned. According to NRC staff, the agency has reduced its backlog of license reviews. Additionally, two industry stakeholders expressed concern that longer license renewal processes may translate to increased fees for licensees. Related to this issue, two licensees stated that while the total number of licensees that NRC regulates is declining, the number of NRC staff is decreasing at a slower rate, meaning these licensees believe that NRC has too many staff for its current workload. For example, one industry stakeholder said that the number of medical licensees in the materials users fee class has decreased as a result of the agreement state program, which allows a state to assume regulatory authority in place of NRC. Despite this decrease in workload, this licensee believes that NRC has not decreased its workforce accordingly. According to NRC staff, NRC's Project Aim initiative was to address this challenge. Project Aim sought to establish clearer agency-wide priorities, right size the agency's budget and workforce to fit its new workload, streamline agency processes, and better position the agency to respond to changes in external conditions in

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an agile and flexible manner. At this time, the extent to which NRC's actions for Project Aim will address stakeholders' challenges is unclear.

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### NRC Is Taking Steps to Increase Transparency and Timeliness of Its Fee-Setting Process, but Its Plans Are Incomplete

As part of its Project Aim initiative, NRC has initiated a project to improve the transparency of its fee calculations and timeliness of when it communicates fee changes in its annual fee rule, but NRC has not established measures to assess whether the project will achieve the desired results and has sought limited stakeholder involvement in the project. NRC's Project Aim report recommended that the agency undertake efforts with the goals of (1) simplifying how NRC calculates user fees, (2) improving transparency, and (3) improving the timeliness of communications about fee changes.

NRC has taken several steps toward addressing this recommendation, including publishing a request for information in the *Federal Register* on March 22, 2016, asking for stakeholders' comments regarding the general communications NRC provides about its fees and the public's understanding of NRC's fee-setting process. The comment period closed on May 6, 2016, and NRC received comments from eight entities. In addition, NRC held a public meeting on April 13, 2016, to gather information on the agency's current fee development process and to hear stakeholders' views. NRC then formed a steering committee with representatives from several offices across the agency that evaluated NRC's fee-setting process and also considered the comments NRC received from stakeholders on its fee rules and its request for information. On the basis of stakeholders' comments and input from the steering committee, NRC staff identified over 50 actions that they believed would improve transparency and timeliness. Fourteen of the 50 actions are process improvements that NRC plans to address in 2017, including plans to publish its proposed and final fee rules earlier than in previous years, as previously discussed. Additionally, NRC is planning to add a section to its public website regarding frequently asked questions about user fees and will update the questions as new initiatives are implemented. NRC is also planning to publish a blog post in response to comments received from its request for information via the *Federal Register* and create a website where it will publish responses to the comments it received and post electronic files of its fee calculations.

According to NRC's Project Aim report and NRC staff, NRC will measure the success of its efforts toward reaching its goals with two metrics: (1) completing the activities identified by the steering committee and (2) the comments it receives on its annual fee rules. According to NRC staff, if the changes they are making do not increase transparency and

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stakeholder understanding of the fee-setting process, they would expect to receive corresponding comments on the annual fee rule. We previously found, however, that nonfederal stakeholders have said that relying solely on public notice and comment through the *Federal Register*—as NRC intends to do—is insufficient for obtaining stakeholder input.<sup>33</sup> We heard similar comments from industry stakeholders we interviewed. For example, industry stakeholders told us that, in some cases, they did not provide comments on NRC’s fee rule because they believed that NRC would not change its fee-setting process. In addition, NRC staff could not explain to us how they will know to what extent their efforts will achieve the goals identified by Project Aim, if at all, because they have not established measurable performance metrics or a plan and schedule for measuring performance. Similarly, NRC staff said they plan to continue incorporating changes to future iterations of their fee rule, but have no plans to evaluate the effects of these changes. A critical element in an organization’s efforts to manage for results is its ability to set meaningful goals for performance and to measure progress toward these goals—practices in line with the performance planning and reporting framework put into place by the Government Performance and Results Act of 1993 and the GPRA Modernization Act.<sup>34</sup> Specifically, the GPRA Modernization Act requires agencies to take the following steps, which we have previously reported can also serve as leading practices at lower levels within an agency,<sup>35</sup> such as with programs and projects: (1) establish performance goals to define the level of performance to be achieved; (2) express such goals in an objective, quantifiable, and measurable form; (3) establish a balanced set of performance measures, such as output, outcome, customer service, and efficiency, for each goal; and (4) provide a basis for comparing actual program results with established performance goals. Without setting performance goals and measures, NRC cannot effectively assess the extent to which its actions are improving timeliness and transparency.

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<sup>33</sup>GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008).

<sup>34</sup>Pub. L. No. 103-62 (1993); Pub. L. No. 111-352 (2011).

<sup>35</sup>GAO, *Environmental Justice: EPA Needs to Take Additional Actions to Help Ensure Effective Implementation*, [GAO-12-77](#) (Washington, D.C.: Oct. 6, 2011) and GAO, *Foreign Aid Reform: Comprehensive Strategy, Interagency Coordination, and Operational Improvements Would Bolster Current Efforts*, [GAO-09-192](#) (Washington, D.C.: Apr. 17, 2009).

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## Conclusions

Given the mix of public benefits and services to users inherent in regulatory programs, it is important for fee structures and costs to be transparent and easily understood by stakeholders, including fee payers, policy makers, and the general public and communicated in a timely manner. Agencies can promote transparency by providing appropriate information to address the diverse needs of these groups. However, until NRC clearly defines and consistently uses terms, provides complete calculations and explanations for fees, and produces accurate fee rules and work papers, stakeholder understanding of NRC's fee calculations may remain limited. NRC has recognized and taken some steps to address stakeholders' concerns related to the fee-setting process. Without developing performance measures, however, and implementing a plan and schedule for measuring progress toward meeting its goals, NRC cannot effectively assess the extent to which it is meeting its goals of increasing the transparency and timeliness of its fee-setting process and could be focusing its resources on efforts that do not accomplish these objectives.

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## Recommendations for Executive Action

To enhance the transparency and timeliness of NRC's fee-setting process, we recommend that the Chairman of the Nuclear Regulatory Commission (NRC) direct NRC staff to take the following two actions:

Clearly present information in NRC's proposed fee rule, final fee rule, and fee work papers, by defining and consistently using key terms, providing complete calculations for how fees are determined, and ensuring the accuracy of the fee rules and work papers, so that stakeholders can understand fee calculations and provide substantive comments to the agency on them.

Develop objective, measurable, and quantifiable performance goals and measures that enable NRC to assess the extent to which its efforts to improve transparency and timeliness are successful and implement a plan and schedule for comparing results with the established performance goals.

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## Agency Comments and Our Evaluation

We provided a draft of this report to NRC for review and comment. NRC provided written comments, which are reproduced in appendix III. In its written comment, NRC generally agreed with our recommendations. NRC also provided technical comments, which we incorporated as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Chairman of NRC, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [RuscoF@gao.gov](mailto:RuscoF@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Frank Rusco". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Frank Rusco  
Director, Natural Resources and Environment



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*List of Requesters*

The Honorable John Barrasso  
Chairman  
Committee on Environment and Public Works  
United States Senate

The Honorable Fred Upton  
Chairman  
Subcommittee on Energy  
Committee on Energy and Commerce  
House of Representatives

The Honorable James M. Inhofe  
United States Senate

The Honorable Robert E. Latta  
House of Representatives

The Honorable Adam Kinzinger  
House of Representatives

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# Appendix I: Scope and Methodology

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The objectives of this audit were designed to provide Congress insights into the Nuclear Regulatory Commission's (NRC) fee-setting process. We (1) examined how NRC calculates its regulatory user fees and how its fee-setting process has changed between fiscal years 2010 and 2016, (2) assessed the extent to which NRC explains its fee calculations in its fiscal year 2016 final fee rule, and (3) identified the challenges that industry stakeholders identified with NRC's fee-setting process and the actions NRC has taken to address them.

To determine how NRC calculates its regulatory user fees and how its fee-setting process has changed between fiscal years 2010 and 2016, we examined NRC's final fee rules and associated work papers from fiscal years 2010 through 2016 with a focus on fiscal years 2015 and 2016 and interviewed NRC staff from the Office of the Chief Financial Officer. We reviewed the laws that provide NRC statutory authority to charge regulatory user fees—the Independent Offices Appropriations Act of 1952 and the Omnibus Budget Reconciliation Act of 1990—and interviewed staff from the NRC's Office of General Council to learn about NRC's interpretation of its legal authority to assess these fees.<sup>1</sup> We also reviewed OMB's guidance on user fees, OMB Circular No. A-25, Revised, and NRC's policies and guidance on its fee process.<sup>2</sup> Similarly, we reviewed prior GAO reports issued in 2008 and 2015 that describe user fee design principles.<sup>3</sup>

To determine the extent to which NRC explains its fee calculations in its fiscal year 2016 final fee rule we examined NRC's fiscal year 2016 final fee rule and associated work papers and interviewed NRC staff. We also reviewed NRC's *Principles of Good Regulation*, which include guidance on transparency.<sup>4</sup> NRC staff confirmed that this guidance applies to the agency's fee rules and work papers. Additionally, under the *Standards for Internal Control in the Federal Government* management is to externally communicate the necessary quality information to achieve the entity's

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<sup>1</sup>31 U.S.C. § 9701 and 42 U.S.C. § 2214.

<sup>2</sup>Office of Management and Budget, *User Charges*, OMB Circular No. A-25, Revised.

<sup>3</sup>GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 2008) and GAO, *Federal User Fees: Key Considerations for Designing and Implementing Regulatory Fees*, [GAO-15-718](#) (Washington, D.C.: September 2015).

<sup>4</sup>Nuclear Regulatory Commission, *Principles of Good Regulation*, accessed July 25, 2016, <http://www.nrc.gov/about-nrc/values.html#values>.

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objectives.<sup>5</sup> We also reviewed NRC's fiscal year 2016 final fee rule and work papers to identify areas that were not clear or contained errors and interviewed NRC staff to seek additional clarification, as needed. We also interviewed NRC staff in the Office of the Chief Financial Officer and non-federal stakeholders, including licensees.

To determine the challenges, if any, that industry stakeholders identified with NRC's fee-setting process and the actions, if any, NRC has taken to address them, we reviewed comments submitted in the *Federal Register* on NRC's fee rules from fiscal years 2015 and 2016 and NRC's responses; interviewed a stratified nongeneralizable sample of 13 industry stakeholders—including eight large and two small licensees and three industry trade organizations—and 1 nonindustry stakeholder and interviewed NRC staff.<sup>6</sup>

To select licensees to include as industry stakeholders, we used fee-collection data from NRC's Financial Accounting and Integrated Management Information System, which included approximately 3,000 licensees. We assessed the reliability of the data and found them to be sufficiently reliable for the purpose of selecting licensees to interview. We selected large licensees based on fee collection data provided by NRC staff for fiscal years 2011 through 2015. From each of the nine fee classes, we selected the licensee that was assessed the highest total amount of combined service and annual fees from fiscal years 2011 to 2015. If a licensee was assessed the highest combined fee amount in more than one fee class, we selected the licensee who paid the second highest amount, so that no licensee was selected twice. After we interviewed our selected licensee from the research and test reactor fee class, we determined that its line of business was unique in that fee class and therefore decided to interview an additional licensee to gain an additional perspective on NRC's fee-setting process. We selected small licensees based on data provided by NRC staff on small entity fee adjustments. From these data, we selected a random licensee from the materials users fee class and the only licensee from the uranium recovery fee class; these were the only two fee classes with licensees designated by NRC as small entities. If a licensee did not respond to our interview request, we made an additional selection. We made a nongeneralizable

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<sup>5</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>6</sup>Data collected are anecdotal and are not generalizable to all of NRC's licensees.

selection of industry trade organizations to interview because they represented a variety of interests. We attempted to identify potential nonindustry stakeholders but were able to identify only one group, representing scientists. We developed and pretested a standard question set for our interviews with stakeholders to ensure we consistently captured their views on any challenges they had experienced with NRC's fee-setting process. We then analyzed the results of these interviews and related documents to identify the main themes and develop summary findings. Specifically, two analysts separately analyzed stakeholders' responses and identified key themes. In describing these responses in the report, we attribute the information to industry stakeholders. We compared these analyses and all initial disagreements regarding the categorizations of industry stakeholders' responses were discussed and reconciled. The analysts then tallied the number of responses in each category. To characterize industry stakeholders' views throughout this report, we defined modifiers (e.g., "most") to quantify industry stakeholders' views as follows:

- "most" users represents 9 to 13 stakeholders,
- "several" stakeholders represents 5 to 8 stakeholders, and
- "some" stakeholders represents 2 to 4 stakeholders.

We assessed actions NRC is taking to improve the transparency of its fee calculations and timeliness of when it communicates fee changes in its fee rule with the performance measurement requirements contained in the Government Performance and Results Act as updated by the GPRA Modernization Act. We reviewed documentation related to NRC's initiative and interviewed NRC staff.

We conducted this performance audit from January 2016 to January 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Nuclear Regulatory Commission's Annual Fee Calculation

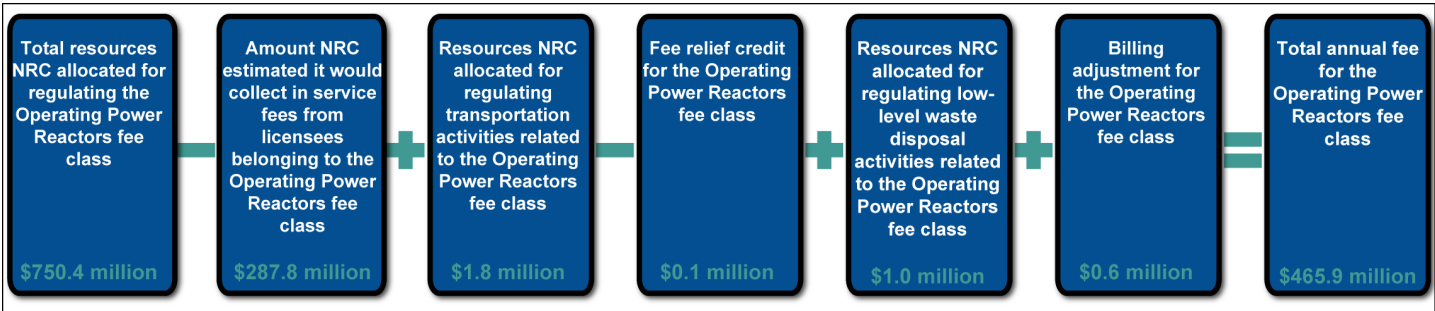
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To calculate the annual fee it will collect from each licensee, NRC starts with the resources it has allocated for regulating each fee class and then subtracts the amount it estimates it will collect in service fees, among other adjustments, which may differ for each fee class. NRC uses the following five steps to determine the annual fee amount that it must collect from each fee class:

1. **Service fee estimates.** NRC subtracts the amount it estimates it will collect in service fees from each fee class during the fiscal year from the resources it has allocated for regulating a fee class. NRC staff said they based their service fee collection estimates in the proposed fee rule on one quarter of current fiscal year data and three quarters of prior year data and the final fee rule on three quarters of current year data and one quarter of prior year data. For example, in fiscal year 2016, NRC estimated it would collect \$287.8 million in service fees from the operating power reactors fee class and, in this step, subtracted this amount from the resources it had allocated for regulating the fee class.
2. **Transportation fees.** NRC adds its resources for regulating licensees' transportation activities to the annual fee amount for each fee class. For example, in fiscal year 2016 NRC allocated \$1.8 million to regulate transportation activities related to the operating power reactors fee class and added this amount to the fee class's total annual fee amount during this step.
3. **Fee relief credit or surcharge.** NRC adds or subtracts a fee relief credit or surcharge based on each fee class's percentage of its budget. This amount may change from year-to-year if the amount NRC allocates for fee-relief activities exceeds or falls below 10 percent of its fee-recoverable appropriation level. For example, in fiscal year 2016, NRC allocated \$70,000 less than this 10 percent threshold and subsequently subtracted \$57,300 from the operating power reactors fee class total annual fee amount during this step.
4. **Low-level waste fees.** NRC adds the amount it allocated for regulating low-level waste disposal activities for the operating power reactors, fuel facilities, and materials users fee classes; this does not apply to the other fee classes. In fiscal year 2016, NRC allocated \$1.0 million for regulating low level waste disposal activities related to the operating power reactors fee class and added this amount to the fee class's total annual fee amount during this step.
5. **Billing adjustments.** NRC first calculates the amounts of fee payments that it estimates it will receive during the current fiscal year for work that was performed in the prior fiscal year for each fee class.

NRC then subtracts those amounts from the amounts of fee payments that it expects to collect in the following fiscal year for work performed in the current fiscal year for each fee class based on the each fee class's percentage of its budget. For example, in fiscal year 2016, NRC estimated it would need to collect \$600,000 from licensees in the operating power reactors fee class to account for these billing adjustments. Following these calculations, NRC calculated the total annual fee amount that it would need to collect from the operating power reactors fee class to be \$465.9 million. Figure 6 shows an example of the process by which NRC calculated the total annual fee amount for the operating power reactors fee class for fiscal year 2016.

Figure 6: Nuclear Regulatory Commission's (NRC) Calculation of the Total Annual Fee Amount for the Operating Power Reactors Fee Class in Fiscal Year 2016



Source: GAO analysis of Nuclear Regulatory Commission's (NRC) data. | GAO-17-232

After NRC calculates the total amount of annual fees that it must collect for each fee class, it allocates this amount among the individual licensees for each fee class with the following processes:<sup>1</sup>

- **Operating Power Reactors.** NRC equally divides the annual fee amount among licensees in this fee class. In fiscal year 2016, NRC divided the total annual fee amount—\$465.9 million—among 100 licensees, resulting in a fee per licensee of \$4.659 million.
- **Spent Fuel Storage/Reactor Decommissioning.** NRC equally divides the annual fee amount among licensees in this fee class. In fiscal year 2016, NRC divided the total annual fee amount—\$24 million—among 122 licensees, resulting in a fee per licensee of \$197,000.

<sup>1</sup>Licensees in each fee class that qualify as small entities under NRC's size standards may pay a reduced annual fee.

- **Research and Test Reactors.** NRC equally divides the annual fee amount among licensees in this fee class. In fiscal year 2016, NRC equally divided the total annual fee amount for this fee class—\$326,000—among four licensees, resulting in a fee per licensee of \$81,500.
- **Fuel Facilities.** NRC first divides licensees in this fee class into seven subgroups—such as high-enriched uranium fuel facilities and low-enriched uranium fuel facilities—and calculates different fee amounts for each subgroup based on NRC's level of effort associated with regulating each. In fiscal year 2016, NRC determined that regulating the high-enriched uranium facilities subgroup was about 50 percent of NRC's total effort for the fee class. For this subgroup, NRC calculated about \$15.7 million in fees, which is about 50 percent of the approximately \$31.6 million total annual for the fee class. NRC divided this amount between the two licensees in the high-enriched uranium facilities subgroup, resulting in a fee per licensee of about \$7.9 million. The remaining \$15.9 million for this fee class was similarly distributed among the other subgroups.
- **Uranium Recovery Facilities.** NRC first divides licensees in this fee class into nine subgroups—such as basic *In Situ* recovery facilities—and calculates different fee amounts for each subgroup based on the regulatory benefit associated with each. In fiscal year 2016, NRC determined that it would collect \$370,000 in total annual fees from the licensees in this fee class, excluding fees assessed to the Department of Energy.<sup>2</sup> NRC determined that 67 percent of the total regulatory benefit for this fee class would be attributable to the basic *In Situ* recovery facilities subgroup. On the basis of this determination, NRC calculated that it needed to collect about \$246,000 in annual fees from the basic *In Situ* recovery facilities fee class. NRC divided this amount among the five basic *In Situ* recovery facilities licensees, resulting in a fee per licensee of about \$49,000. The remaining amount—about \$124,000—for this fee class was similarly distributed among the other subgroups.
- **Materials Users.** NRC first divides licensees in this fee class into 44 subgroups—such as radiographers—and calculates different fee amounts for each subgroup based on application and inspection costs as well as inspection frequency to recover the total annual fee amount for the fee class—\$35.0 million. On the basis of these factors, NRC

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<sup>2</sup>NRC assessed the Department of Energy a separate annual fee of about \$545,000 in fiscal year 2016.

calculated the total annual fees for the radiographer subgroup to be about \$2.1 million. NRC then divided this amount among the 80 radiographer licensees, resulting in a fee per licensee of about \$26,000. The remaining amount for this fee class—about \$32.9 million—was similarly distributed among the other subgroups.

- **Transportation.** As described previously, NRC allocates its costs for this fee class among the other fee classes based on the resources that NRC allocates to regulating transportation activities for each fee class, with the exception of the Department of Energy, which is assessed an annual fee.
- **Rare Earth.** NRC has not assessed annual fees to licensees in this fee class since fiscal year 2010. From fiscal years 2010 through 2014, NRC did not assess an annual fee to this fee class because it did not receive any license applications for rare earth facilities. NRC did not assess an annual fee to this fee class from fiscal years 2015 to 2016 because all of the costs associated with regulating it were recovered through service fees.
- **Import/Export.** According to NRC staff, NRC has not assessed annual fees to licensees in this fee class since fiscal year 1999 because all of the costs associated with regulating it were recovered through service fees.



# Appendix III: Comments from the Nuclear Regulatory Commission



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

January 17, 2017

Mr. Frank Rusco  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20226

Dear Mr. Rusco:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your e-mail dated December 14, 2016, requesting comments on the U.S. Government Accountability Office (GAO) draft report GAO-17-232, "Nuclear Regulatory Commission: Regulatory Fee-Setting Calculations Need Greater Transparency."

The NRC generally agrees with the GAO's recommendations that the NRC could enhance the transparency of NRC's regulatory user fees, noting that improvement activities are in progress. These efforts were discussed with GAO and are described below, and in the enclosure in greater detail.

GAO recommendations:

"To enhance the transparency of NRC's regulatory user fees, we recommend that the Chairman of the NRC take the following two actions:

1) Clearly present information in its proposed fee rule, final fee rule and fee work papers that stakeholders need to understand fee calculations and provide substantive comments to the agency by defining and consistently using key terms, provide complete calculations for how fees are determined, and correcting errors.

2) Develop (1) performance goals and measures to assess the extent to which its efforts under Project Aim create greater transparency regarding NRC's fee calculations and improves the timeliness with which NRC communicates fee changes so that they are objective, measurable, and quantifiable, and (2) develop and implement a plan and schedule for comparing results with the established performance goals."

NRC response:

As a result of Project Aim, the NRC has committed to implementing improvements to enhance the agency's ability to plan and execute its mission while adapting in a timely and effective manner to a dynamic environment. As part of this initiative, the NRC analyzed its fee setting process to improve transparency, timeliness and equitability for our stakeholders. We developed numerous improvements that are scheduled to be implemented over the next few years, as practicable. Starting in fiscal year 2017, the agency will implement changes to the proposed and final fee rule, related work papers, public NRC license fee website, project manager outreach to licensee activities, and the Congressional Budget Justification that will

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enhance transparency for stakeholders. To enhance timeliness for communicating fee changes, we are planning to publish the proposed fee rule earlier than in previous years. To enhance transparency, we are beginning the analysis to support changes to fee setting to enhance equitability, and invoicing. In addition, the NRC has established goals to support the improvement of the fee setting process, and developed output level metrics to measure whether the improvements to the fee setting process have been achieved. We constantly strive to improve the transparency, timeliness, and equitability of our fee setting process and look forward to using GAO's insights to enhance our ongoing improvement efforts.

The NRC appreciates the opportunity to provide its planned activities to address the recommendations provided in the GAO report. Please feel free to contact Mr. John Jolicoeur at (301) 415-1642 or [John.Jolicoeur@nrc.gov](mailto:John.Jolicoeur@nrc.gov) if you have questions or need additional information.

Sincerely,



Victor M. McCree  
Executive Director for Operations

Enclosure:  
NRC comments on GAO report

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Frank Rusco, (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Hilary Benedict (Assistant Director), Wyatt R. Hundrup, and Douglas G. Hunker made key contributions to this report. Also contributing to this report were Richard Burkard; Keya Cain; John Delicath; Emily E. Eischen; Benjamin Licht; Perry Lusk, Jr.; Laurel Plume; Brian Shaw; and Sara Sullivan.

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