

subject to unnecessary costs due to overlapping Federal or State agency jurisdiction. The commenter stated that in non-Agreement States, the NRC should accept the groundwater quality assessments conducted by the state or the Environmental Protection Agency rather than performing duplicative environmental assessments. Several commenters suggested that the agency proceed expeditiously with extension of the reactor oversight process for these and other facilities as a risk-informed, performance-based oversight process that recognizes the inherent safety of these operations should further reduce unnecessary regulatory burdens.

Response. The NRC has responded to similar concerns raised by commenters in several previous fee rulemakings. First, in response to the specific suggestions about how the NRC should regulate these licensees or operate more efficiently, the NRC again notes that the purpose of this rule is to recover the required percentage of its FY 2003 budget authority, and that the manner in which the NRC carries out its regulatory activities is outside the scope of this rulemaking.

The NRC must assess annual fees to NRC licensees to recover the budgeted costs not recovered through part 170 fees and other receipts. The NRC recognizes that this presents fairness and equity issues as costs must be recovered from licensees for activities that do not directly benefit them. To address these fairness and equity concerns, as previously noted, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005.

The Commission is concerned about the issue of decreasing numbers of licensees and its implications. Although a decreasing licensee base is only one of several possible factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry, and the NRC, which must by statute recover its budgeted costs from the licensees it regulates. Potential remedies to this problem involve establishing arbitrary fee caps or thresholds for certain classes of licensees, or combining fee categories. However, alternatives involving caps or thresholds, and combining fee categories, also raise potential legal and fairness and equity concerns. As noted previously, given the requirements of OBRA-90, as amended, to collect most of NRC's budget authority through fees, failure to

fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. At this time, the Commission is not prepared to adopt any of these approaches. The NRC notes that the annual fees for the Uranium Recovery class decreased from FY 2001 to FY 2002, and remained stable for FY 2003 due in part to the concerted efforts by the program offices to reduce budgeted costs associated with this program. However, the NRC recognizes the concerns expressed and will continue its efforts to seek cost efficiencies and reduce regulatory burdens, without compromising its commitment to public health and safety.

4. Annual Fees for Power Reactor Licensees

Comment. One commenter stated that there is insufficient basis to support the required costs to the power reactor licensees for activities not directly attributable or beneficial to their operation. Another commenter expressed concern about the 15 percent increase in the operating power reactor annual fee, despite the two percent drop in the agency's overall recovery rate as mandated by the FY 2001 Energy and Water Appropriations Act. Both commenters raised fairness and equity concerns regarding utilities paying for agency activities that do not provide a direct benefit to them.

Response. The part 171 power reactor annual fees are established to recover the costs for generic activities related to power reactors such as research, rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., allegations, most contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders). The annual fees for each class also include a share of the total surcharge costs. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensees, such as activities that are exempt from part 170 fees by law or Commission policy. The surcharge is required in order for NRC to meet its statutory fee recovery requirements. To address fairness and equity concerns related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001 Energy and

Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. This decrease of six percent in FY 2003 is applied to help offset the surcharge amount.

The annual fee for the power reactor class includes the agency's homeland security costs related to power reactors for this fiscal year, which significantly contributed to the 15 percent increase in power reactor fees. Additionally, the increased workload for the new reactor licensing activities contributed to the increase.

The agency workpapers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the workpapers show by class the total costs allocated, and the estimated part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund) and the estimated part 170 collections, in accordance with OBRA-90, as amended.

5. Annual Fees for Fuel Facilities Licensees

Comment. Several commenters expressed concerns with the annual fees for fuel facilities licensees. One commenter stated that these fees are unreasonably high and not in accord with NRC's Strategic Plan: Fiscal Year 2000-Fiscal Year 2005. Other commenters did not understand why there was a significant discrepancy between the increase in annual fees for fuel fabricators (43 percent) in comparison to power reactors (15 percent), when much of the annual fee increase was attributed to the costs of security-related activities and these activities are similar for both types of facilities. These commenters requested that NRC review this discrepancy and consider revisions to more equitably allocate these costs. Another commenter expressed concerns about the annual fees for gaseous diffusion plants (GDPs), stating that it did not believe that the annual fee for a GDP should be equal to or more than the annual fee for a power reactor. This commenter suggested that NRC reevaluate its methodology to establish the FY 2003 fees with the objective of achieving a fee structure that is fair and equitable when viewed in its entirety. Another commenter stated that low enriched uranium fuel facilities constitute a very small part of the nuclear fuel cycle and pose only