

#### D. Other Issues

##### 1. Security Costs

*Comment.* The majority of comments did not support the NRC collecting security-related costs from licensees. These commenters noted that the FY 2003 NRC budget includes \$29.3 million for homeland security activities, and stated that these activities should be funded through the General Treasury as part of the nation's protection of critical infrastructure. Some of these commenters also stated that significant security costs are being incurred for nuclear vulnerability assessments without due consideration of the evaluated threats or rigor of the methodology for conducting these assessments, which is not the best way to allocate the nation's resources in defending against terrorist attacks. Other commenters noted their belief that there is overlap and duplication of functions in Nuclear Security and Incident Response with those of other Federal agencies, particularly the Department of Homeland Security. One comment suggested that the increased fees for FY 2003 did not appear to reflect a consideration for the substantial work and engineered solutions that have already been implemented in the area of security.

*Response.* The NRC appreciates the concerns raised by commenters with regard to homeland security costs being funded through licensee fees. The NRC notes that the President's FY 2003 budget requested that NRC's funding for homeland security activities be excluded from the fee base, as was the case in FY 2002. However, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), included NRC's budget for homeland security activities in the fee base. Therefore, the FY 2003 fees must include the \$29.3 million budgeted for NRC's homeland security activities. The Commission agrees there are merits to the arguments that licensees should be treated in the same fashion as other owner/operators of critical infrastructure that do not generally pay user fees for Federal agency homeland security costs. The NRC notes that S. 1043, the "Nuclear Infrastructure Security Act of 2003," recently approved by the Senate Committee on Environment and Public Works, provides that amounts appropriated to the NRC for homeland security activities would be excluded from the fee base except for costs associated with fingerprinting, background checks and security inspections.

In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budget and manner in which the agency carries out its activities are not within the scope of this rulemaking. Nonetheless, the NRC is addressing the issues raised regarding the costs of vulnerability assessments and NRC's relationship with the Department of Homeland Security.

##### 2. NRC Budget

*Comment.* Many commenters offered suggestions for reducing NRC's budget and for more efficient/different use of NRC's resources. Many of these comments addressed expenditures on homeland security, while others suggested more generally that NRC reduce expenditures, streamline processes, or otherwise perform activities more efficiently. Commenters suggested that changes in NRC's regulatory approach, such as the reactor oversight process and risk-informed changes to inspection, assessment, and enforcement processes, should result in reduced fees. One commenter suggested that increased cooperation between the NRC and industry could increase efficiency and conservation of limited resources.

*Response.* The NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' suggestions concerning the NRC's budget and the use of NRC resources. The NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

##### 3. Cost Recovery for Agreement State Activities

*Comment.* One commenter stated that it supported the approach to allocate Agreement State Program activities to user fees, rather than the General Fund. Another commenter suggested the opposite approach, and stated that the costs for activities like Agreement State Programs should not be allocated to user fees, but rather paid for from the General Fund.

*Response.* The FY 2003 proposed fee rule did not propound to change how the NRC recovers costs for Agreement State Program activities, nor does this final rule make any changes with regard

to recovery of these costs. The Commission has the authority to, but as a matter of policy does not, assess part 170 fees for specific services rendered to an Agreement State. Agreement States devote significant monetary and staff resources to national radiation control programs, and this effort assists the NRC and other Federal agencies in protecting public health and safety. The NRC costs for these Agreement State activities are funded through a surcharge, which is allocated to the various license classes on a prorated basis.

The surcharge is being funded from the general fund of the U.S. Treasury as a result of the FY 2001 Energy and Water Development Appropriations Act. This act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, to address fairness and equity concerns related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee. The 2 percent per year reduction from the fee base accounts for activities such as Agreement State Oversight and Agreement State Regulatory Support.

##### 4. Fee Increase Communication and Timing

*Comment.* Several commenters suggested that the NRC communicate the potential magnitude of fee increases earlier in the process. The commenters stated that this communication would allow licensees to forecast and mitigate financial impacts. These commenters expressed disappointment that the NRC gave its licensees no warning that significant increases were being contemplated. Several commenters expressed concern that NRC fee increases are seen by licensees almost a year after their budgets have been initially set, and suggested that NRC shift its process by one year (e.g., the 2003 fee collection would be the 2004 fee projection). One commenter specifically requested that NRC review and forecast ongoing costs and fees over the next five years so that licensees can make accurate business forecasts. One commenter stated that NRC's method of collecting retroactive fees during the last government quarter for the previous three quarters will create a significant and unanticipated negative financial impact.

*Response.* The NRC appreciates the concerns raised by these commenters. However, as a matter of law (OBRA-90, as amended) and policy the NRC must collect the statutorily mandated level of fees by the end of the fiscal year to which they are attributed, in this case,