



OFFICE OF THE  
SECRETARY

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

April 7, 1993

RELEASED TO THE PDR.

4/20/93

date

initials

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-93-064 - FEDERAL REGISTER NOTICE TO  
REQUEST PUBLIC COMMENT ON NRC FEE POLICY

The Commission (with all Commissioners agreeing) has approved publication of the Federal Register notice requesting public comment on NRC fee policy, which includes the American Mining Congress rulemaking petition, with the changes indicated in the attachment.

Attachment:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque  
OGC  
OIG  
Office Directors, Regions, ACRS, ACNW (via E-Mail)  
OP, SDBU/CR, ASLBP (via FAX)

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SECY NOTE: THIS SRM, SECY-93-064, AND THE VOTE SHEETS OF ALL  
COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10  
WORKING DAYS FROM THE DATE OF THIS SRM

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NUCLEAR REGULATORY COMMISSION

10 CFR PARTS 170 AND 171

RIN 3150-AE54

NRC FEE POLICY; REQUEST FOR PUBLIC COMMENT

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is soliciting public comment on the need for changes to its fee policy and associated legislation. This action responds to recent legislation that requires NRC to review its policy for assessment of annual fees, solicit public comment on the need for changes to this policy, and recommend to the Congress the changes in existing law the NRC finds are needed to prevent the placement of an unfair burden on NRC licensees. The NRC is presenting various options, alternatives, and questions for consideration and comment concerning potential legislative changes as well as potential policy changes that would require amendments to NRC's fee regulations. The NRC is also announcing the receipt of and requesting comment on a petition for rulemaking submitted by the American Mining Congress (PRM-170-4) that requests that NRC conduct a rulemaking to evaluate its fee policy.

DATES: The comment period expires (90 days after publication). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Given the relatively long comment period, requests for extensions of the comment period will not be ~~granted~~ viewed with favor.

ADDRESSEES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-504-1678).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

#### SUPPLEMENTARY INFORMATION:

##### Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), ~~dated~~ November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF) for FYs 1991 through 1995 by assessing fees. The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are generally for the review of applications for and the issuance of new licenses or approvals, amendments to licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal Register which established the

Portions of the 1991 rule were recently remanded to the Commission for reconsideration as a result of the Court's decision in Allied Signal v. NRC, (D.C. Cir. March 16, 1993).

10 CFR Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the 10 CFR Part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR Part 170 hourly rate and fees, and the 10 CFR Part 171 annual fees. ~~The FY 1991 rule has been challenged in Federal court by several parties and those lawsuits are pending.~~ A separate Federal Register notice addressing the remand issues will be published in April.

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR Parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR Part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR Part 171 adjusted the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of \$400 per licensed category was established for small businesses and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), the NRC published a final rule in the Federal Register that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992. The basic methodology used in the FY 1992 rule was unchanged from that used to calculate the 10 CFR Part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472).

#### Purpose

On October 24, 1992, the Energy Policy Act was enacted. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under Section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent

budgeted costs for other activities that would be specified by the NRC. With respect to this alternative, the NRC is particularly interested in receiving public comment on the following questions:

Should OBRA-90 be modified to remove all specified activities identified in the four items above from the fee base? If all four activities are excluded, approximately \$61 million, based on the FY 1992 budget, would be removed from the fee base.

If the Commission decides, based on public comment, to pursue legislation to remove only some of the activities from the fee base, should the NRC place a higher priority on those regulatory activities that do not support the licensees to whom the fee is assessed such as international activities, administering the Agreement State program, small entity subsidies, and nonprofit educational activities; than to those activities that indirectly provide benefits to NRC licensees such as generic LLW, generic uranium enrichment activities, and certain materials users' generic regulatory costs?

2. Modify OBRA-90 to permit the NRC to assess annual fees to organizations other than NRC licensees and approval holders that benefit from regulatory activities. For example, if this alternative is pursued, it could result in the NRC charging generic regulatory costs to NRC applicants. This would mean that the first applicant for a new class of license could be required to pay for all NRC regulation development and research costs to put a regulatory program in place to regulate an entire class of licensees.

3. Modify the Atomic Energy Act to permit the NRC to assess 10 CFR Part 170 fees to Federal agencies, other than ~~the Tennessee Valley Authority and the United States Enrichment Corporation~~ for identifiable services such as reviews, approvals and inspections where direct recovery for these costs is currently prohibited by IOAA. This would result in approximately \$4 million in additional fees being collected from Federal agencies.

{ those that already are subject  
to such assessments,