

May 27, 2009

Mr. Kevin Neyland, Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Neyland:

In response to Executive Order 12866, "Regulatory Planning and Review," I am enclosing the U.S. Nuclear Regulatory Commission's (NRC's) Fiscal Year (FY) 2009 Regulatory Plan. Our plan includes a description of two significant regulatory actions that NRC expects to issue in final form in FY 2009.

Questions regarding the NRC's Regulatory Plan may be directed to Michael T. Lesar, Chief of the Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, at (301) 492-3663.

Sincerely,

/RA/

Gregory B. Jaczko

Enclosure:
NRC's FY 2009 Regulatory Plan

U.S. Nuclear Regulatory Commission's Fiscal Year 2009 Regulatory Plan

A. Statement of Regulatory Priorities

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. The NRC's regulatory mission is to ensure that civilian uses of nuclear materials and facilities are carried out in a manner that will protect public health and safety and the environment and that will not be inimical to the common defense and security of the United States. NRC regulates the operation of nuclear power plants and fuel cycle plants; the safeguarding of nuclear materials from theft and sabotage; the safe transportation of nuclear materials; the decommissioning and return to safe use of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material.

NRC's regulatory priority for the next fiscal year is to continue to ensure that nuclear power plants and other licensed facilities are operated safely and that nuclear materials are possessed and used in a manner that will adequately protect public health and safety. NRC routinely conducts comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations as part of its regulatory process. NRC has developed internal procedures and programs to ensure that only necessary requirements are imposed on its licensees and to review existing regulations to determine whether the requirements imposed are still necessary.

NRC will update its requirement to recover approximately 90 percent of its budget authority, less the amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities (non-fee items), as required by the Omnibus Budget Reconciliation Act of 1990, as amended.

NRC will establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001. NRC also will update its security regulatory framework for the licensing of new nuclear power plants.

B. Description of the Significant Regulatory Actions

TITLE: Revision of Fee Schedules; Fee Recovery, Fiscal Year 2009.

Legal Authority: 31 U.S.C. 9701, 42 U.S.C. 22201(w), 2214.

Legal Deadline: The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires that the NRC recover approximately 90 percent of its budget authority in Fiscal Year (FY) 2009, less the amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items). The Act requires that the fees for FY 2009 must be collected by September 30, 2009. Therefore, the final rule is expected to become effective no later than August 21, 2009.

Enclosure

Need: This rulemaking would amend the licensing, inspection, and annual fees charged to NRC licensees and applicants for an NRC license. The amendments are necessary to recover approximately 90 percent of the NRC budget authority for FY 2009, less the amounts appropriated for non-fee items. The OBRA-90, as amended, requires that the NRC accomplish the 90 percent recovery through the assessment of fees. The NRC assesses two types of fees to recover its budget authority. License and inspection fees are assessed under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) to recover the costs of providing individually identifiable services to specific applicants and licensees (10 CFR Part 170). IOAA requires that the NRC recover the full cost to the NRC of all identifiable regulatory services that each applicant or licensee receives. The NRC recovers generic and other regulatory costs not recovered from fees imposed under 10 CFR Part 170 through the assessment of annual fees under the authority of OBRA-90 (10 CFR Part 171). Annual fee charges are consistent with the guidance in the Conference Committee Report on OBRA-90 that the NRC assess the annual charge under the principle that licensees who require the greatest expenditure of the agency's resources should pay the greatest annual fee.

Alternatives: Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

Anticipated Costs and Benefits: The cost to NRC licensees is approximately 90 percent of the NRC FY 2009 budget authority less the amounts appropriated for non-fee items. The dollar amount to be billed as fees to NRC applicants and licensees for FY 2009 is approximately \$870.21 million.

Risks: Not applicable.

Timetable: Proposed rule published March 2, 2009 (74 FR 9129).
Final rule expected to be published June 2009.
Final rule expected to be effective August 2009.

Additional Information: Rebecca Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 301-415-7126.

RIN: 3150-AI52.

TITLE: Power Reactor Security Requirements

Legal Authority: 42 USC 2201; 42 USC 5841.

Legal Deadline: None.

Need: This rulemaking amends the security regulations and adds new security requirements pertaining to nuclear power reactors. This rulemaking establishes and updates generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001. Additionally, this rulemaking adds several new requirements not derived directly from the security order requirements but developed as a result of insights gained from implementation of the security orders, review of site security plans, implementation of the enhanced baseline inspection program, and NRC

evaluation of force-on-force exercises. This rulemaking also updates the NRC's security regulatory framework for the licensing of new nuclear power plants. Finally, it resolves three petitions for rulemaking (PRM) that were considered during the development of the final rule.

Alternatives: The alternative is for the NRC to not amend the current regulations regarding power reactor security. Licensees would continue to comply with the Commission's security orders. This alternative would not address several "lessons-learned" identified during the time since the initial review and implementation of the orders. Additionally, this alternative would present a problem for the licensing of new reactors that did not receive the post September 11, 2001, security orders. The NRC's security regulations would be out of date, and not represent the minimum requirements the Commission deems necessary to ensure the adequate protection of public health and safety and the common defense and security. This would directly conflict with the Commission's licensing obligations set forth in Section 182 of the Atomic Energy Act of 1954, as amended.

Anticipated Costs and Benefits: The final rule will result in a total, one-time cost for all nuclear power plant sites of \$115.71 million, followed by total annual costs of \$38.65 million. The total present value of these costs is estimated at \$590.23 million (using a 7-percent discount rate) and \$857.33 million (using a 3-percent discount rate) over the next 30 years.

Risks: This rulemaking will institute two different sets of requirements. The first set of requirements is similar to those that were previously imposed under one of the following orders issued after September 11, 2001:

- EA-02-026, "Interim Compensatory Measures (ICM) Order," issued February 25, 2002 (March 4, 2002; 67 FR 9792);
- EA-02-261, "Access Authorization Order," issued January 7, 2003 (January 13, 2003; 68 FR 1643);
- EA-03-039, "Security Personnel Training and Qualification Requirements (Training) Order," issued April 29, 2003 (May 7, 2003; 68 FR 24514); and
- EA-03-086, "Revised Design Basis Threat Order," issued April 29, 2003 (May 7, 2003; 68 FR 24517).

These requirements are necessary to ensure that these facilities provide adequate protection of the health and safety of the public and are in accord with common defense and security.

The second set of requirements is cost-justified by substantially increasing public health and safety or common defense and security beyond the minimum needed for adequate assurance. These requirements are judged (qualitatively) to reduce the risks to public health and safety associated with security-related events.

Timetable: Proposed rule published October 26, 2006 (71 FR 62664).
Final rule published March 27, 2009 (74 FR 13925).
Final rule effective May 26, 2009.

Additional Information: Timothy A. Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, 301-415-1462.

RIN: 3150-AG63.