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05/28/2002 02:29:57 PM

Record Type: Record

To: John F. Morrall III/OMB/EOP@EOP
cc: Trip Rothschild <TBR@nrc.gov >
Subject: Letter to J. Morrall

Attached is the above subject document on "Draft Report to Congress on the Costs and Benefits of Federal Regulations Published for comment 67 Fed. Reg. 15014 (March 28, 2002).



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May 28, 2002

Mr. John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB, Room 10235
725 17th St., NW.
Washington, D.C. 20503

Re: Draft Report to Congress on the Costs and Benefits of Federal Regulations (Published for Comment at 67 Fed. Reg. 15014 (March 28, 2002))

Dear Mr. Morrall:

The Nuclear Regulatory Commission staff (NRC) appreciates the opportunity to comment on the OMB draft report. The NRC supports OMB's emphasis on an open, transparent and prompt approach to regulatory oversight based on analytic rigor. In this regard, we note that in its Federal Register Notice, OMB states that it is considering revising its analytic guidance documents governing the preparation of cost-benefit analyses and risk assessments. The NRC looks forward to commenting on any concrete changes that OMB might propose.

It would appear to a reader of Table 8 in the report that NRC had simply ignored the importance of a cost-benefit analyses by omitting preparation of such an analysis for two of its three "major rules" promulgated during the reporting period. The two offending rules are both fee assessment rules which should either be excluded from the report or should be marked with an asterisk to indicate that it would have been inappropriate for the NRC to prepare cost-benefit analyses of these rules. In the Omnibus Budget Reconciliation Act of 1990, as amended, Congress mandated that the Commission must recover almost its entire budget authority through the imposition of user fees upon the regulated community. Congress specified that these fees had to have a "reasonable relationship to the cost of providing regulatory services." This statutory scheme requires the Commission to assess fees based on its costs rather than try to monetize the benefits received by the regulated community. Thus, it is misleading to suggest that the Commission does not routinely prepare cost-benefit analyses on its major rules. The NRC routinely prepares detailed, quantitative, monetized information concerning the costs and benefits of its regulatory actions, including its rulemaking actions that are not classified by OMB as "major rules."

A more detailed set of comments is attached as Enclosure 1.

Sincerely,

/R/

Trip Rothschild
Assistant General Counsel for Legal Counsel,
Legislation and Special Projects

Detailed Nuclear Regulatory Commission Staff Comments

1. OMB listed the NRC among agencies that did not conduct cost-benefit analyses for the fee rules, TABLE 8 - RULES FOR INDEPENDENT AGENCIES (APRIL, 2000 - SEPTEMBER, 2001). The fee recovery rulemakings for FY 2000 and FY 2001 are two of the three major rules the NRC issued during the period covered by the report. The fee rule for each fiscal year is considered a major rule because it has an annual effect on the economy of \$100,000,000 or more.

Although these rules are considered major rules by a strict application of the criteria for such a determination, they should not be included in a report on the costs and benefits of Federal regulations because the NRC has no discretion on whether to undertake fee schedule rulemakings or on the cost imposed. The Omnibus Budget Reconciliation Act of 1990, as amended, mandates that the NRC recover all or substantially all of its operating budget. The NRC complies with this statutory mandate through the licensing, inspection, and annual fees charged to its licensees and applicants. These fees are revised each year to ensure that the NRC recovers the necessary funds and that the charges are assessed as fairly and equitably as possible.

2. The report incorrectly indicates that the NRC provided no monetized information on costs for the fee rules. On the contrary] the Supplementary Information section of the preamble to each of the final rules contains intricate detail on the amounts that must be recovered (costs to licensees and applicants) and the methodologies used to determine both the recoverable amount and how the costs are allocated to NRC licensees.

3. The report states that independent agencies, such as the NRC, provided little quantitative information on the costs and benefits of major rules. We note that the draft report acknowledges that the NRC did provide qualitative information on the costs and benefits of the one substantive major rule, the Emergency Core Cooling System Evaluation Models, covered by the report. It should be noted that the Supplementary Information section for each of the NRC fee rules contains detailed, quantitative] monetized information concerning the costs that are allocated to its licensees. Because of the mandatory nature of the fee rule and because the entire Supplementary Information discussion concerns the economic impact of the costs imposed, a separate regulatory analysis was not necessary and thus not prepared for the fee rules.

4. The report questions the rigor and extent of the analyses conducted by independent agencies. The NRC prepares a regulatory analysis for each substantive rule in accordance with the Regulatory Analysis Guidelines approved by the Commission and issued as NUREG/BR-0058, Revision 3. The regulatory analysis must examine the economic impact, in terms of costs and benefits] of alternatives considered in developing the rule. The NRC's guidelines are quite specific as to the rigor and extent of the analyses it conducts.

5. The report emphasizes increased consultation with State, local, and Tribal governments on regulations that impact them. It should be noted that the NRC routinely provides States the opportunity for early and substantive involvement in the formulation of rules, policies, directives, or guidance. The NRC enters into agreements with States for coordinating regulatory responsibilities for activities related to the nuclear materials program.

ENCLOSURE 1