

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

[Docket No. PRM-170-4]

#### American Mining Congress; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission ("NRC" or "Commission") received a petition for rulemaking submitted by the American Mining Congress ("petitioner") concerning the licensing, inspection and annual fees assessed by the NRC. The petitioner requested that the NRC amend its regulations to alleviate what the petitioner claimed are inequitable impacts of NRC user and annual fees on its members, specifically for uranium recovery sites with conventional mills that have ceased operations and are awaiting NRC approval of their reclamation plans. The petitioner claimed that there is a lack of a rational relationship between fees and regulatory services. The petitioner requested that the fee be waived for any licensed facility serving solely as a cost center and not generating revenues; that licensees be given the ability to review and have input into the NRC's budget and fee development and that annual fees only be increased in proportion to normal inflation rates; that time limits be established for NRC's processing of amendment requests and cost sheets showing sample charges be provided to licensees; that more detailed information be provided to support the bills for licensing and inspection services; and that the Department of Energy (DOE) be assessed costs for NRC review of DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA). After careful consideration, the Commission has decided to deny the petition for rulemaking but notes that

(1) the NRC will continue its current practice of providing available backup data to support Part 170 licensing and inspection billings upon request by the licensee or applicant and (2) petitioner's request that DOE be assessed fees for its UMTRCA actions was implemented in the final fee rule for FY 1994.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Glenda C. Jackson, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6057.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Responses to Comments

#### I. Background

On February 4, 1993, the American Mining Congress petitioned the NRC to amend 10 CFR Parts 170 and 171 to alleviate what the petitioner claimed are inequitable NRC fees assessed its members. Because the petition involved Commission fee policy, the NRC announced receipt of and solicited public comment on the petition in its April 19, 1993 (58 FR 21116), **Federal Register** notice requesting public comment on the NRC's fee policy as required by the Energy Policy Act of 1992. The Energy Policy Act of 1992 directed the NRC to review its policy for assessment of annual fees, to solicit public comment on the need for changes to this policy, and to recommend to the Congress changes needed in existing law to prevent placing an unfair burden on NRC licensees.

The petitioner requested that the NRC take the following four actions to ensure that the fee schedule bears a reasonable relationship to the benefits provided by NRC oversight and regulation.

1. Waive the annual fee for any licensed facility in a standby status and not generating revenue from use of licensed material, i.e., those facilities in standby status which still possess licenses authorizing operation. The petitioner claimed that current NRC policy violates the principle that there must be a reasonable relationship between the cost of the NRC's regulatory program and the benefits derived from

the regulatory services. The petitioner also stated that the annual fee does not reflect NRC involvement with Class I (conventional mill) uranium recovery sites, particularly those that have ceased operations and are awaiting NRC approval of reclamation plans or are in standby status. The petitioner suggested that the fee regulations should take into account the NRC's own failure to complete review as the only reason these sites are assessed annual fees and should adjust those fees accordingly.

2. Institute a system that allows NRC licensees to have some control over their fees. The petitioner suggested that a licensee review board be established to (i) review NRC fees annually; (ii) monitor NRC inspection activities to prevent regulatory abuse; and (iii) propose revisions to the fee system to eliminate inequitable treatment of licensees. The petitioner stated that its central concern with the NRC fee system is the absence of built-in safeguards to prevent overzealous imposition of fees or to ensure that the fee schedule bears a reasonable relationship to the benefits provided by NRC. The petitioner believes that the current system lacks accountability, oversight, and quality control, as well as a provision for licensees to object to unreasonable costs. The petitioner also indicated that the annual fee should be increased only in proportion to normal inflation rates and stated that NRC's hourly rate is excessive for NRC staff as compared to hourly charges of a senior consultant, principal or project manager at a nationally recognized consulting firm.

3. Develop a consistent method for applying charges by setting standards for services provided by the Commission. For example, the petitioner indicated that comparable amounts should be charged for similar types of work (i.e., amendment requests), regardless of which licensee submits the request or which particular NRC employee completes the work. NRC should develop and distribute to its licensees a cost sheet describing sample charges for different types of work, establish time limits for processing amendment requests, and distribute response times to all licensees. In addition, the 10 CFR Part 170 licensing and inspection bills should show not only hours worked and hourly charges, but also a description of the work performed, the name(s) of