

**Nuclear Regulatory Commission Comments on
Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations**

Information Provided by Independent Regulatory Agencies

The report indicates that the independent regulatory agencies are providing little monetized benefit information about their major rules (pages 24-25 of the draft). As a matter of course, however, the NRC has long prepared regulatory analyses of the costs and benefits of rules and even some guidance documents, whether the rules have been major or not. Moreover, these analyses provide both monetized and non-monetized cost and benefit information. The way the NRC conducts these analyses is described in the agency's Regulatory Analysis Guidelines, NUREG/BR-0058, which reflect OMB guidance. These NRC guidelines can be found at

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0058/>.

It is true that the NRC did not provide monetized benefit information for the one major NRC rule the draft report mentions. The rule is the agency's annual "fee" rule. The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires the agency to recover most of its budget through fees. Every year the agency must issue a rule that governs the agency's collection of fees for the current fiscal year. These fees exceed \$100 million, and thus OMB calls the rule "major," although the annual increase or decrease in this sum has never approached \$100 million. Furthermore, we do not believe that it is appropriate to apply the cost/benefit model to a regulation that carries out statutory direction to recover the agency's budget through fees. For these reasons, we believe that OMB's annual reports should either not include the NRC's annual fee rule as a "major rule" or at least clearly state that the NRC's annual fee rule is a statutorily required rule.

Answers to Some of the Questions on Page 40 of the Draft Report

Question 1: We have tentatively decided to limit the studies in our review to those that would enable an assessment of the validity of the ex-ante benefit and/or cost estimates of one or more individual rules. Is this the appropriate scope?

Answer: Limiting the studies to one or more individual rules may not provide sufficient information. For example, analyses for public health and safety rules may have different analytical requirements than analyses for rules that have social or economic purposes. Without sufficient scope, it will be difficult to draw widely useful lessons.

Question 2: Which additional studies provide useful information on the validity of pre-regulation estimates of benefits and costs?

Answer: The NRC's Office of Nuclear Regulatory Research has undertaken several studies to determine if the regulatory expectations are achieving the desired outcomes. Some examples of actions analyzed in the Regulatory

Effectiveness Studies include: the Station Blackout Rule (NUREG-1776); Unresolved Safety Issue A-45, Shutdown Decay Heat Removal Requirements (NUREG-1777); Option B of 10 CFR 50, Appendix J, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors (NUREG/CR-6832); and the Anticipated Transient without Scram Rule (NUREG-1780). NUREGs 1776, -77, and -80 are available through links on the following page: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>. NUREG/CR-6832 is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6832/>.

Question 3: Are there any particularly fruitful examples of rules where it would be feasible and useful for analysts to undertake validation studies?

Answer: Validation studies of cost estimates may be feasible and useful for nearly all rules. However, validation studies of benefit estimates can be problematic. For example, if a plant is operating safely and makes a modification to comply with a new NRC requirement, it is difficult ex-post to determine what amount of the plant's safe, post-regulatory operation is a benefit of the new regulation. Also, while the NRC has benefit estimates for dollar per person-rem averted because of a regulatory action, it is difficult to examine the estimates ex-post if no accident results. We note that obtaining information ex-post requires the cooperation of regulated parties.

Other comments

While it is clear in Chapter 2 and in the request for comments published in the Federal Register that the report looks at the ex ante benefits and costs of major regulations, the point should be made clearly in the Executive Summary and in Chapter 1.

In Table 1-2, on page 8, the lower number in the range of benefits is shown as "68,084," but the numbers shown in the column add up to only 67,633.

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