



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

MAR 12 1984

MEMORANDUM FOR: John Philips, Chief, Rules and Procedures Branch  
Division of Rules and Records, ADM

FROM: William O. Miller, Chief, License Fee Management Branch, ADM

SUBJECT: REVIEW OF PROPOSED REVISION TO PART 35

We have reviewed the subject draft and our comments are limited to recovery of Commission's licensing costs.

1. §35.28 of the draft notice (page 30) contains the following statements:  
"It is the sense of Congress that fees may be necessary to recover operating costs. The Commission's discussion of this topic is in 35 F.R. 145, published January 6, 1971." The Commission's statutory authority for fees is Title V of the Independent Offices Appropriation Act of 1952 (formerly codified at 31 U.S.C. 483a). With the enactment of Title 31, U.S.C., into positive law (Public Law 97-258, September 13, 1982, 96 Stat. 1051) the law is now found at 31 U.S.C., §9701, and in part, reads:

§9701. Fees and charges for Government services and things of value.

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

The Commission's fee policy has been updated several times since 1971. Based on §9701, the policy is to recover all direct and indirect costs incurred in providing special benefits to identifiable recipients. Licensing and inspection activities have been determined by the courts to be special benefits.

2. The subject paper states that there is little use of the medical general license in §35.31 of Part 35. This conclusion was based on a NMSS survey which indicated that 55-60 physicians may be using the license. Waiving the application fee for the few general licensees

8509230248 850906  
PDR PR  
35 50FR30616 PDR

MAR 12 1984

who would be required to obtain a specific license to continue their ongoing program may be justified, however, to waive fees on an "across the board" basis for license amendments and renewals, and for physicians who are not currently using the general license, would seem to be inconsistent with the intent of §9701 and Commission fee policy. The assessment of fees must be fair and this means, among other things, the assessment must be consistently applied. To provide free specific licensing services from the effective date of the revised rule forward to a select group would appear to be unfair.

*William O. Miller*

William O. Miller, Chief  
License Fee Management Branch  
Office of Administration

*4/12/84 - As long as you don't give  
up the store, go ahead. NB - only  
Rese 60, and they can't get any  
amendments. - nlm ok-wmm*