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June 29, 2009

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for FY 2009*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Nuclear Regulatory Commission (NRC), entitled "Revision of Fee Schedules; Fee Recovery for FY 2009" (RIN: 3150-AI52). We received the rule on June 15, 2009. It was published in the *Federal Register* as a final rule on June 10, 2009. 74 Fed. Reg. 27,642.

The final rule amends the licensing, inspection, and annual fees charged to NRC's applicants and licensees. The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires NRC to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2009, not including amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. NRC's total budget for FY 2009 is \$1,045.5 million, and the appropriations for the non-fee items total \$78.1 million. The required fee recovery amount for fiscal year 2009 is approximately \$870.6 million. After billing adjustments, the total amount to be billed as fees is approximately \$866.5 million.

The final rule increases the hourly rates used in assessing full cost fees and flat application review fees, increases flat application fees, revises the description of certain fee categories to more accurately reflect NRC's regulatory efforts, applies fee relief or surcharges to certain fees, reduces the maximum small entity fee, revises

regulations due to an Agreement with the State of Virginia to accept some licenses, and makes certain administrative changes for clarification.

The final rule has an effective date of August 10, 2009. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801§ (a)(3)(A). The Senate received the rule on June 16, the House received the rule on June 17, and our office received the rule on June 15, 2009, which means that the rule will not have the required 60-day delay in its effective date.

Enclosed is our assessment of NRC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that, except for the delay in the effective date, NRC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Rebecca L. Schmidt
Director, Office of Congressional Affairs
Nuclear Regulatory Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
NUCLEAR REGULATORY COMMISSION
ENTITLED
"REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2009"
(RIN: 3150-AI52)

(i) Cost-benefit analysis

Although NRC did not prepare a separate cost-benefit analysis, the rule notes that under OBRA-90, NRC's annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by NRC, and shall be assessed to those licensees the NRC determines can fairly, equitably, and practicably contribute to their payment.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

NRC determined that the final rule will significantly impact a substantial number of small entities, and prepared a Regulatory Flexibility Analysis (RFA). NRC also prepared a small entity compliance guide as required by the Small Business Regulatory Enforcement Act. NRC concluded that the final rule's reduced maximum annual fees for small entities appropriately balanced the objective of OBRA-90 to collect 90 percent of NRC's budget from fees with the objective of RFA to reduce the impact of fees on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, NRC is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

NRC promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act, 5 U.S.C. § 553. NRC published the proposed fee rule in the *Federal Register* for public comment on March 2, 2009, 74 Fed. Reg. 9129. NRC received eight comments by the close of the comment period on April 1, 2009, and two comments after the close of the comment period. NRC responded to the ten comments in the final rule, 74 Fed. Reg. 27,642.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

NRC determined that the final rule does not contain information collection requirements and is therefore not subject to the Paperwork Reduction Act requirements.

National Technology Transfer and Advancement Act, 15 U.S.C. § 3701

NRC determined that the final rule does not constitute the establishment of a standard that contains generally applicable requirements.

National Environmental Policy Act, 44 U.S.C. §§ 34321-4347

NRC determined that the final rule is the type of action described in categorical exclusion 10 C.F.R. § 51.22(c)(1), and therefore, NRC did not prepare an environmental assessment or an environmental impact statement. NRC noted that the final rule does not affect the environment, and therefore, no environmental justice issues are raised.

Statutory authorization for the rule

NRC stated that the final rule is authorized by the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. §§ 552-53.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, NRC is not subject to Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, NRC is not subject to Executive Order 13,132.