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United States Government Accountability Office  
Washington, DC 20548

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July 2, 2010

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

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

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for FY 2010*

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 2010” (RIN: 3150-AI70). We received the rule on June 21, 2010. It was published in the *Federal Register* as a final rule on June 16, 2010, with a stated effective date of August 16, 2010. 75 Fed. Reg. 34,220. This rule was received by the House of Representatives on June 17, 2010, and by the Senate on June 18, 2010. 156 Cong. Rec. H4777 (June 23, 2010) (Executive Communications, etc.); 156 Cong. Rec. S5438 (June 24, 2010) (Executive and Other Communications).

The final rule amends the licensing, inspection, and annual fees charged to NRC’s applicants and licensees. NRC views these amendments as necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended,<sup>1</sup> which requires the NRC to recover through fees approximately 90 percent of its budget authority in fiscal year 2010, not including amounts appropriated from the Nuclear Waste Fund, for Waste Incidental to Reprocessing, and for generic homeland security activities.

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<sup>1</sup> 42 U.S.C. § 2214.

NRC determined that, based on the Energy and Water Development and Related Agencies Appropriation Act, 2010,<sup>2</sup> its required fee recovery amount for fiscal year 2010 is approximately \$912.2 million and that, after accounting for billing adjustments, the total amount to be billed as fees is approximately \$911.1 million.

Enclosed is our assessment of the 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 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

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<sup>2</sup> Pub. L. No. 111-85, 123 Stat. 2845 (Oct. 28, 2009).

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 2010"  
(RIN: 3150-AI70)

(i) Cost-benefit analysis

In its submission of this final rule, the Nuclear Regulatory Commission (NRC) indicated that an analysis of cost and benefits was not applicable with respect to this rule. NRC stated that the annual fees, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by NRC and will be assessed to those licensees NRC, in its discretion, 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 this final rule will have a significant impact on a substantial number of small entities and prepared a Regulatory Flexibility Analysis. NRC also prepared a small entity compliance guide. NRC concluded that the rule's reduced annual fees for small entities appropriately balanced the relevant statutory objectives.

(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 published a proposed fee rule on March 10, 2010, to solicit public comment. 75 Fed. Reg. 11,375. NRC received six comments before the end of the comment period and one thereafter which it addressed in the final rule.

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

NRC determined that this final rule does not contain any information collection requirements under the Act.

Statutory authorization for the rule

NRC promulgated this final rule under the authority of sections 901, 902, and 9701 of title 31; sections 2014, 2021, 2021b, 2111, 2201(w), and 5841 of title 42; and section 3504 note of title 44 of the United States Code.

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

NRC determined that the final rule is the type of action categorical excluded from this requirement under section 51.22(c)(1) of title 10, Code of Federal Regulations. NRC also concluded that this regulatory action does not affect the environment and no environmental justice issues are raised.

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

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

Executive Order No. 13,132 (Federalism)

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