



441 G St. N.W.
Washington, DC 20548

B-326167

August 20, 2014

The Honorable Barbara Boxer
Chairman
The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate

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

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for Fiscal Year 2014*

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 Fiscal Year 2014" (RIN: 3150-AJ32). We received the rule on August 5, 2014. It was published in the *Federal Register* as a final rule on June 30, 2014. 79 Fed. Reg. 37,124.

The final rule amends the licensing, inspection, and annual fees NRC charges to its applicants and licensees. The Omnibus Budget Reconciliation Act of 1990, as amended, requires NRC to recover through fees approximately 90 percent of its budget authority in fiscal year 2014, not including amounts appropriated for Waste Incidental to Reprocessing, amounts appropriated for generic homeland security activities, and Inspector General services for the Defense Nuclear Facilities Safety Board.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). This final rule has a stated effective date of August 29, 2014. The rule was published in the *Federal Register* on June 30, 2014, and received by the House of Representatives and the Senate on July 30, 2014. 79 Fed. Reg. 37,124; 160 Cong. Rec. H7179 (July 31, 2014); 160 Cong. Rec. S5214 (July 31, 2014). Therefore, this rule does not have the required 60-day delay in 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. With the exception of the required 60-day delay in effective date, 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: Amy Powell
Acting 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 FISCAL YEAR 2014"
(RIN: 3150-AJ32)

(i) Cost-benefit analysis

Congress appropriated a total of \$1,055.9 million to the Nuclear Regulatory Commission (NRC) for fiscal year (FY) 2014 based on the Consolidated Appropriations Act. Pub. L. No. 113–76, 128 Stat. 5, 181 (2014). Based on the Omnibus Budget Reconciliation Act of 1990, as amended, NRC is required to recover \$930.7 million through licensing and inspections under part 170 of title 10, Code of Federal Regulations, and annual fees under part 171 of title 10, Code of Federal Regulations, for FY 2014. This amount excludes non-fee items totaling \$19.5 million. The required fee recovery amount is \$66.8 million more than the amount estimated for recovery in FY 2013, an increase of 7.7 percent. After accounting for billing adjustments, NRC decreased this amount further by \$14.0 million as a result of net billing adjustments (sum of estimated unpaid current year invoices minus payments for prior year invoices and current year collections for a reclassified fuel facility licensee). NRC calculates that this leaves approximately \$916.7 million in FY 2014 to be billed as fees to licensees for part 170 licensing and inspection fees and part 171 annual fees.

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

NRC prepared a FY 2013 biennial regulatory flexibility analysis in accordance with the FY 2001 final rule, which stated that the small entity fees would be reexamined every 2 years. 66 Fed. Reg. 32,467 (June 14, 2001). For the FY 2013 final rule, small entity fees increased to \$2,800 for the maximum upper-tier small entity fee and increased to \$600 for the lower-tier small entity fee as a result of the biennial review, which factored in the number of increased hours for application reviews and inspections in the fee calculations. NRC stated that these fees remain unchanged for this final rule.

(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.

On April 14, 2014, NRC published a proposed fee rule. 79 Fed. Reg. 21,036. NRC received 20 comments on the proposed rule, to which it responded in the final rule. All 20 commenters opposed the hourly rate increases.

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

NRC determined that this final rule contains no 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 2201(w), 2014, 2021, 2021b, 2111, and 5841 of title 42; and section 3504 note of title 44, United States Code.

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.