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Washington, DC 20548

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July 14, 2016

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

The Honorable Fred Upton
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016*

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 2016” (RIN: 3150-AJ66). We received the rule on June 29, 2016, but Congress received it on June 22, 2016. It was published in the *Federal Register* as a final rule on June 24, 2016. 81 Fed. Reg. 41,171.

The final rule amends the licensing, inspection, special project, and annual fees charged to its applicants and licensees and, for the first time, NRC is recovering its costs when it responds to third-party demands for information in litigation where the United States is not a party (Touhy requests). These amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90), which requires NRC to recover approximately 90 percent of its annual budget through fees. The effective date of the rule is August 23, 2016.

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 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: Eugene Dacus
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 2016”
(RIN: 3150-AJ66)

(i) Cost-benefit analysis

Based on the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), the Nuclear Regulatory Commission (NRC) stated that it is issuing the Fiscal Year (FY) 2016 final fee rule amount of \$1,002.1 million, which is a decrease of \$13.2 million from FY 2015. Based upon the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90) exclusions, NRC concluded it is required to recover \$332.7 million under part 170 of title 10, *Code of Federal Regulations* in user fees, and the remaining \$550.7 million under part 171 of title, *Code of Federal Regulations*, in annual fees. This amount excludes non-fee items totaling \$21.1 million. Additionally, 10 percent of NRC's budget is recovered through a congressional appropriation. After accounting for the 10 percent appropriation, and net billing adjustments, NRC must collect \$883.4 million in FY 2016 from its licensees. NRC included a table summarizing the fee-recovery amounts for the FY 2016 final fee rule using the enacted budget, and taking into account excluded activities, the 10 percent appropriation, and net billing adjustments.

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

NRC stated that it prepared a regulatory flexibility analysis for this final rule. NRC determined that under this final rule, small entity fees increased to \$3,400 for the upper tier small entity fee and increased to \$700 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. Because of a technical oversight, a higher implemented change was not included in the FY 2015 final fee rule. According to NRC, implementing a higher increase than the FY 2016 increase to account for that oversight would have had a disproportionate impact upon NRC's small licensees compared to other licensees. Consequently, NRC staff revised the increase based on the average percentage increase for the prior two biennial reviews of small entity fees. NRC states that it believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of NRC's costs for activities that benefit them. NRC also stated that it prepared a Small Entity Compliance Guide for the FY 2015 final fee rule, which has been relabeled for FY 2016.

(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 March 23, 2016, NRC published a proposed fee rule. 81 Fed. Reg. 15,457. NRC received seven comments on the proposed rule, to which it responded in the final rule. NRC also held a public meeting on April 13, 2016, on the proposed rule.

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

NRC determined that the final rule contains no collection requirements under PRA.

Statutory authorization for the rule

NRC promulgated this rule under the authority of the Independent Offices Appropriations Act of 1952, and OBRA-90, as amended. Specific authority is from sections 552a and 552b of title 5; sections 901, 902, and 9701 of title 31; sections 2014, 2021b, 2111, 2201(w), 2214, 2273, 2282, 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.