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United States Government Accountability Office
Washington, DC 20548

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June 15, 2005

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

The Honorable Joe Barton
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Nuclear Regulatory Commission: Revision of Fee Schedules; Fee Recovery for FY 2005*

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 2005" (RIN: 3150-AH61). We received the rule on June 1, 2005. It was published in the Federal Register as a final rule on May 26, 2005. 70 Fed. Reg. 30526.

The final rule amends the licensing, inspection, and annual fees charged to NRC's applicants and licensees. The final rule is necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year 2005, less the amounts appropriated from the Nuclear Waste Fund. The amount to be recovered for FY 2005 is approximately \$540.7 million.

The final rule has an announced effective date of July 25, 2005. The Congressional Review Act 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). The rule was received by Congress on June 1, 2005, and was published in the Federal Register on May 26, 2005. Therefore, the rule does not have the required 60-day delay in its effective date.

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 indicates that, with the exception of the 60-day delay in the rule's effective date, the NRC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: William N. Outlaw
Acting Director, Office of
Congressional Affairs
Nuclear Regulatory Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
NUCLEAR REGULATORY COMMISSION
ENTITLED
"REVISION OF FEE SCHEDULES;
FEE RECOVERY FOR FY 2005"
(RIN: 3150-AH61)

(i) Cost-benefit analysis

The NRC was not required to, nor did it prepare, a cost-benefit analysis of the final rule. However, the preamble to the final rule contains an explanation of how the amount of the fees was computed to permit the NRC to recover the necessary costs required by the Omnibus Budget Reconciliation Act. For fiscal year 2005, the fee recovery amount is approximately \$540.7 million.

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

The entire Final Regulatory Flexibility Analysis is contained in Appendix A of the final rule. The analysis describes the reason for the rule and the legal basis for it; describes and estimates the number of small entities affected by the rule; discusses the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burden on small entities, including a maximum fee level.

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

The final rule, promulgated by an independent regulatory agency, is not subject to title II of the Unfunded Mandates Act of 1995.

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

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

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. 553. On February 22, 2005, the NRC published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 8677. NRC received 16 comments in response to the proposed rule and responds to those comments in the preamble to the final rule.

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

The NRC states that the final rule does not contain any information collections that are subject to review under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was promulgated under the authority of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), as amended by the FY 2001 Energy and Water Development Appropriations Act (Pub. L. 106-377) and the Atomic Energy Act of 1954, as amended.

Executive Order No. 12866

The final rule, promulgated by an independent regulatory agency, is not subject to the review requirements of the order.