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General Accounting Office
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Office of the General Counsel

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April 26, 1996

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Revision of Fee Schedules; 100% Fee Recovery, FY 1966

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 entitled "Revision of Fee Schedules; 100% Fee Recovery, FY 1966" (RIN 3150-AF39). The rule implements for fiscal year 1966 section 6101 of the Omnibus Budget Reconciliation Act of 1990, as amended, 42 U.S.C. § 2214, which requires the Commission to recover from its applicants and licensees approximately 100 percent of its budget authority less amounts appropriated from the Nuclear Waste Fund. It was published in the Federal Register as a final rule on April 12, 1996. 61 Fed. Reg. 16203.

Enclosed is our assessment of the Commission'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 the Commission complied with the applicable requirements.

If you have questions concerning the substance of the rule, please contact Victor S. Rezendes, Director for Energy, Resources, and Science Issues, on 512-3841.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. John C. Hoyle
Secretary of the Commission
Nuclear Regulatory Commission

ANALYSIS OF NUCLEAR REGULATORY COMMISSION
1996 FEE SCHEDULE RULE
UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv)

(i) Cost-benefit analysis

A cost-benefit analysis was not required or prepared for the rule.

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

The Commission determined that one part of the fee schedule--specifically, the annual fee for materials licensees--will have a significant impact on a substantial number of small entities. Therefore, the Commission prepared an initial and final regulatory flexibility analysis under sections 603 and 604 of title 5, respectively.

Section 603: Initial regulatory flexibility analysis

The proposed rulemaking, 61 Fed. Reg. 2948 (January 30, 1996), incorporates in its Supplementary Information the full text of an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. This analysis was transmitted to the SBA Chief Counsel for Advocacy, as required by subsection 603(a).

The analysis included in the proposed rulemaking provides the information required by paragraphs 603(b)(1) through (3). It describes the reasons for the proposed agency action, and its objectives and legal basis--i.e., to comply with the cost-recovery requirements of section 6101 of the Omnibus Budget Reconciliation Act of 1990. It also describes the small entities to which the proposed rule will apply and estimates their number. With respect to paragraph 603(b)(4), the Supplementary Information states that the proposed rule does not impose reporting or other information-collection requirements. With respect to paragraph 603(b)(5), the analysis does not identify any relevant federal rules that may duplicate, overlap, or conflict with the proposed rule. The Commission staff advised us that there are no such rules. With respect to subsection 603(c), the analysis describes several alternative means of assessing fees for small entities that might lessen the economic impact of the rule on them.

Section 604: Final regulatory flexibility analysis

The Supplementary Information published in the Federal Register with the final rule includes the full text of the Commission's final regulatory flexibility analysis. See Appendix A to the Final Rule, 61 Fed. Reg. at 16224-16226. This analysis includes the information required by subsection 604(a). In particular, it summarizes and

evaluates comments concerning alternative means of establishing fees for small entities and evaluates these alternatives. The Commission determined to retain its prior year practice of mitigating the impact of the fees by establishing maximum annual fees for two categories of small entities.

Section 605: Avoidance of duplicative or unnecessary analysis

The Commission did not invoke any of the exemptions or special procedures authorized by section 605 in preparing its regulatory flexibility analyses. Its impact analyses do consider information and comments developed in connection with its fee schedule rules for prior years.

Section 607: Preparation of analysis

The Commission's analyses use both quantifiable and general descriptions of the effects of the rule and alternatives on small entities.

Section 609: Participation by small entities

In addition to the actions required by 5 U.S.C. § 553, the Commission transmitted a complete copy of the proposed and final rulemaking materials to each of its licensees, including small entities.

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

The rule, promulgated by an independent regulatory agency, 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.

The rule was promulgated through the general notice of proposed rulemaking procedures of the Act, 5 U.S.C. § 553. The Commission afforded interested persons the opportunity to comment on the proposed rule, and evaluated and responded to the comments in connection with publication of the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3512

The Commission determined that the rule contains no information collection requirements subject to the Act.

Statutory authorization for the rule

Section 6101 of the Omnibus Budget and Reconciliation Act of 1990, as amended, 42 U.S.C. § 2214, requires the Commission to recover from its applicants and licensees, for each fiscal year through 1998, an amount that approximates 100 percent of the Commission's budget authority less any amount appropriated to the Commission from the Nuclear Waste Fund. Such fees include amounts collected from specific entities under section 9701 of title 31, United States Code, for individually identifiable services provided to them.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.

The Commission did not identify any other statutes or Executive orders imposing requirements relevant to the rule.