



Office of the General Counsel

B-277100

June 5, 1997

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: Nuclear Regulatory Commission: Revision of Fee Schedules; 100% Fee Recovery, FY 1997

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 (Commission), entitled "Revision of Fee Schedules; 100% Fee Recovery, FY 1997" (RIN: 3150-AF55). We received the rule on May 23, 1997. It was published in the Federal Register as a final rule on May 29, 1997. 62 Fed. Reg. 29194.

The final rule implements for fiscal year 1997 section 6101 of the Omnibus Budget Reconciliation Act of 1990, as amended, 42 U.S.C. § 2214. It 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. For FY 1997, the Commission must collect approximately \$462 million through these fees. Two types of fees are assessed: (1) applicants and licensees are charged for specific services, such as inspections and licensing reviews, that are provided by the Commission; and (2) the Commission assesses an annual fee to its licensees to recover generic costs that cannot be attributed to specific licensees.

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 any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Nuclear Regulatory Commission is Victor Rezendes, Director for Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Shirley Ann Jackson
Chairman
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; 100% FEE RECOVERY, FY 1997"
(RIN: 3150-AF55)

(i) Cost-benefit analysis

The Commission 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 were computed to permit the Commission to recover the necessary costs required by the Omnibus Budget Reconciliation Act.

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

Because it had determined that the final rule would have a significant impact on a substantial number of small entities, the Commission prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rule. It was printed in its entirety in the preamble at 62 Fed. Reg. 8903.

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

The Commission states that the majority of the small entities are material licensees, approximately 1,400 licensees, or 20 to 25 percent of the total material licensees. To minimize the impact of the final rule on small entities, the Commission is continuing its practice of imposing a maximum annual fee to which small entities are subject.

In addition, in accordance with the Regulatory Flexibility Act, the Commission has prepared a small-entity compliance guide which is published in its entirety as an attachment to the FRFA.

(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 title II of the Unfunded Mandates Reform 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 promulgated using the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published in the Federal Register on February 27, 1997 (62 Fed. Reg. 8885). Nine comments were received in response to the proposed rulemaking and the Commission responds to the comments in the preamble to the final rule.

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

The Commission states that the final rule contains no information collections subject to review under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was promulgated under the authority of section 6101 of the Omnibus Budget and Reconciliation Act of 1990, as amended, 42 U.S.C. § 2214.

Executive Order No. 12866

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