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July 5, 2024

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Nuclear Regulatory Commission: Fee Schedules; Fee Recovery for Fiscal Year 2024*

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 “Fee Schedules; Fee Recovery for Fiscal Year 2024” (RIN: 3150-AK74). We received the rule on June 13, 2024. It was published in the *Federal Register* as a final rule on June 20, 2024. 89 Fed. Reg. 51789. The effective date of the rule is August 19, 2024.

The final rule amends the licensing, inspection, special project, and annual fees charged to NRC’s applicants and licensees. According to NRC, these amendments are necessary to comply with the Nuclear Energy Innovation and Modernization Act, which requires NRC to recover, to the maximum extent practicable, approximately 100 percent of its annual budget, less certain amounts excluded from this fee recovery requirement.

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. 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
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
“FEE SCHEDULES; FEE RECOVERY FOR FISCAL YEAR 2024”
(RIN: 3150-AK74)

(i) Cost-benefit analysis

The Nuclear Regulatory Commission (NRC) conducted an economic analysis of this final rule. According to NRC, it is statutorily required to recover, to the maximum extent practicable, approximately 100 percent of its annual budget, less the budget authority for excluded activities. As a result, NRC stated that it must recover approximately \$808.3 million in fees in fiscal year (FY) 2024, an increase from \$790.6 million in FY 2023. NRC stated that it did not identify any alternatives to the current fee structure guidelines.

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

NRC determined that the changes to the annual fees significantly impact a substantial number of small entities. According to NRC, setting a maximum fee for small entities strikes a balance between the requirement to recover, to the maximum extent practicable, approximately 100 percent of NRC’s budget authority, less the budget authority for excluded activities, and the requirement to consider the means of reducing the impact of the fee on small entities.

(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) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, NRC is not subject to the Act.

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

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

On February 20, 2024, NRC published a proposed rule. 89 Fed. Reg. 12759. NRC received nine comments. According to NRC, it hosted a public meeting on March 7, 2024, to discuss the FY 2024 proposed fee rule. NRC stated that it carefully considered the public comments received on the proposed rule and responded to comments in this final rule.

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

NRC determined that this final rule contains no new or amended information collection requirements (ICRs) under the Act. According to NRC, existing ICRs were approved by OMB under Control Number 3150-1090.

Statutory authorization for the rule

NRC promulgated this final rule pursuant to the Independent Offices Appropriation Act, 1952, and the Nuclear Energy Innovation and Modernization Act. 31 U.S.C. § 9701; 42 U.S.C. § 2215.

Executive Order No. 12866 (Regulatory Planning and Review)

NRC determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, NRC is not subject to the Order.