



Office of the General Counsel

B-281132

October 9, 1998

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: Financial Assurance Requirements for
Decommissioning Nuclear Power Reactors

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 "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" (RIN: 3150-AF41). We received the rule on September 24, 1998. It was published in the Federal Register as a final rule on September 22, 1998. 63 Fed. Reg. 50465.

These amendments to the Commission's requirements for the financial decommissioning of nuclear power plants respond to the potential rate deregulation in the power generating industry and allow a broader range of assurance mechanisms for reactor licensees who lose their ability to recover decommissioning costs through regulated rates and fees or other mandatory charges. The amendments also (1) define "federal licensee" and add several associated definitions, (2) add new reporting requirements pertaining to the use of prepayment and external sinking funds, (3) impose new reporting requirements for power reactor licensees on the status of decommissioning funding, and (4) permit power reactor licensees to take credit for certain earnings on decommissioning trust funds.

Enclosed is our assessment of the Nuclear Regulatory 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 Kathleen Wannisky, Associate General Counsel for Operations, at (202) 512-5207. 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
"FINANCIAL ASSURANCE REQUIREMENTS FOR
DECOMMISSIONING NUCLEAR POWER REACTORS"
(RIN: 3150-AF41)

(i) Cost-benefit analysis

The Nuclear Regulatory Commission prepared a Regulatory Analysis of this regulation which examines the costs and benefits of the alternatives considered by the Commission. The public was made aware of the availability of copies of the analysis in the preamble to the final rule; the Commission also submitted a copy of the analysis to the General Accounting Office with the final rule.

The regulatory analysis identified and addressed the five issues listed below:

- Is fully-funded assurance needed due to deregulation?
- Should the Commission allow credit for earnings after the permanent shutdown of the reactor?
- Should the Commission monitor fund balances through regular periodic reporting?
- Should the Commission allow use of statements of intent by power reactor licensees?
- Should the Commission conduct additional review of decommissioning financial assurance mechanisms?

The analysis calculates the values (or benefits) of options for addressing each of these issues as any increase in the amount of financial assurance provided by the option and any cost savings to the Commission or to industry resulting from the option. The analysis calculates impacts (or costs) of options addressing each of the above issues as any decrease in the amount of financial assurance and any costs resulting from implementing the option. The analysis concludes by describing the decision rationale employed to arrive at the options selected for inclusion in the final rule.

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

The Commission certifies under section 605(b) of the Act that this rule will not have a significant economic impact on a substantial number of small entities. According to the Commission, this rule affects only the licensing and operation of nuclear power plants, and the companies that own these plants do not fall within the scope of the definition of "small entities" set forth in either the Act or the Small Business Administration's size standard regulations.

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

This 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 issued using the notice and comment procedures contained in 5 U.S.C. § 553. The Commission first issued an advance notice of proposed rulemaking (ANPRM) on April 8, 1996 (61 Fed. Reg. 15427). In response to the comments received on the ANPRM from 42 commenters, the Commission issued a proposed rule on September 10, 1997, (62 Fed. Reg. 47588). In the preamble to the proposed rule, the Commission responded to those comments on the ANPRM.

The Commission subsequently received 33 letters containing more than 200 comments on the proposed rule from licensees, licensee organizations, state agencies, public interest groups, and a private citizen. The Commission responded to these comments in the preamble to the final rule.

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

This final rule amends information collection requirements that were previously approved by the Office of Management and Budget under approval number 3150-0011. The preamble to the final rule estimates the annual burden hours to average 8 hours per response; it also solicits comments on any aspect of the information collection, including suggestions for reducing the burden.

Statutory authorization for the rule

The final rule was promulgated pursuant to the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. § 552 and 553.

Executive Order No. 12866

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