

April 21, 2005

Mr. Richard Chandler
Office of Management and Budget
New Executive Office Building
725 17th Street, NW, Room 8025
Washington, DC 20503

Dear Mr. Chandler:

The Omnibus Budget Reconciliation Act of 1990, as amended, requires that the U.S. Nuclear Regulatory Commission (NRC) recover approximately 90 percent of its FY 2005 budget authority, less the appropriation from the Nuclear Waste Fund, by assessing license and annual fees. The NRC is required to recover approximately \$540.7 million in FY 2005. The fee recovery amount is reduced by \$2.7 million to account for billing adjustments and carryover from additional collections in FY 2004 that were unanticipated at the time the final FY 2004 fee rule was published. This leaves approximately \$538 million to be recovered in FY 2005 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts.

In order to comply with the law, the Commission is amending its fee regulations in 10 CFR Parts 170 and 171. The amendments to 10 CFR Part 170 will revise the professional hourly rates and flat license application fees to reflect the costs of providing NRC licensing services to applicants and licensees. The hourly rate used to assess Part 170 fees will increase from \$157 to \$205 for the Nuclear Reactor Safety Program, and from \$156 to \$197 per hour for the Nuclear Materials and Waste Safety Program. These changes are due primarily to the use of a revised estimate of direct staff hours per full time equivalent (FTE) in the hourly rate calculations. Because the NRC's hourly rates are calculated by dividing the total annual costs of a direct FTE by average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculations, the higher the hourly rates. Previously, the NRC used an estimate of 1,776 hours per FTE in its hourly rate calculations, based on Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities." Although this Circular addressed non-fee related agency financial activities, the NRC previously chose to use the 1,776 figure in its fee calculations because more detailed data was not available. However, the NRC has been collecting more detailed data from its new time and labor system since November 2001, which is more appropriate for fee calculation purposes. This is because the 1,776 figure from Circular A-76 includes time for administrative, training, and other activities that, while relevant to consider for certain costing purposes, should not be assumed to be "direct" time when calculating a rate per hour of direct activities. A review of the NRC's data indicates that 1,446 hours per FTE is a more accurate estimate of direct hours per NRC program employee per year because it excludes not only paid leave, but also "indirect" time such as training and general administrative activities.

The use of 1,446 hours per FTE in the hourly rate calculations is the primary reason for the higher FY 2005 hourly rates. The rates also increase due to the higher salaries and benefits resulting from the Government-wide pay raise. The NRC believes the revised rates more accurately reflect the resources NRC expends providing licensee-specific services. For this reason, the NRC believes that the revised hourly rates are consistent with guidance provided by

OMB in Circular A-25, "User Charges," on recovering the full cost of services provided to identifiable beneficiaries. Note that the new hourly rates will not change the NRC's overall fee recovery, since costs not recovered through Part 170 fees are recovered through Part 171 annual fees. Once implemented, the new hourly rates will increase the agency's Part 170 revenue, but decrease total annual fees by the same amount. This shift in fee recovery from Part 171 to Part 170 supports industry comments that consistently recommend that the NRC collect more of its budget through Part 170 fees-for-services vs. Part 171 annual fees.

The amendments to 10 CFR Part 171 will establish the amount of the FY 2005 annual fees to be assessed to reactor licensees, fuel cycle licensees, transportation certificate holders, and materials licensees to recover costs not recovered through 10 CFR Part 170 fees. The FY 2005 annual fees will result in decreased annual fees compared to FY 2004 for five classes of licensees (power reactors, non-power reactors, rare earth mills, spent fuel storage/reactor decommissioning, and transportation), increased annual fees for two classes (fuel facilities, and uranium recovery). For one class, materials users, most categories of licenses will have increased annual fees, others will have decreased annual fees, and two categories' annual fees will remain unchanged. The major factors affecting the annual fee amounts include: changes in budgeted costs for the different classes of licenses, reduction in the statutory requirement for NRC to recover fees from 92 percent in FY 2004 to 90 percent in FY 2005, and estimated Part 170 collections from various classes of licenses.

Those NRC licensees that can qualify as a small entity under NRC's size standards will continue to be eligible to pay reduced annual fees.

Enclosed is a copy of the final rule which is being transmitted to the *Federal Register* for publication. The final rule will become effective 60 days after publication.

Sincerely,

/RA/

Mary S. Givvines, Director
Division of Financial Management
Office of the Chief Financial Officer

Enclosure: Final Revision to
10 CFR Parts 170 and 171

