

NOTATION VOTE

RESPONSE SHEET

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OTHERWISE~~

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-99-053 - FY 1999 FEE RULE

*Marked
Pete
Jim
Diane*

Approved x Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

March 1, 1999

DATE

Entered on "AS" Yes x No

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COMMENTS OF COMMISSIONER MERRIFIELD ON SECY-99-053

I approve publishing a proposed fee rule that discusses rebaselining with a cap (Option C) and straight rebaselining (Option A). I cannot approve going forward with only Option A, the straight rebaselining method, because it would without warning impose significant fee increases on some licensees -- in upwards of 200%. I agree with Commissioner McGaffigan that it would be seemingly inconsistent with OBRA-90 to rebase without any regard for the impact that the new fees will have on a class of licensees' ability to engage in commerce. However, I also agree with Commissioner Diaz that if we rebase with a cap in 1999 without truly rebaselining in 2000, we will perpetuate a subsidy that, given current projections, will only be magnified every year until the next rebaselining. This scenario too is inconsistent with the spirit of OBRA-90, which requires the NRC to ensure that annual fees have a reasonable relationship to the costs of providing services.

I want to emphasize that I find it disconcerting the Commission's hands are tied on this matter. All of the available Options for recovering fees will draw considerable valid criticisms from the regulated industry. Certainly, OBRA-90 is responsible for constraining the Commission's ability to provide equitable relief outside the fee schedule. Consequently, from a public policy perspective, I believe it is incumbent upon the agency to again seek a legislative solution to the problems associated with our fee recovery process. The Commission needs to make it clear that the constraints of the current process will interfere with our ability to serve in the best interests of the public because the it does not provide flexibility to reduce fees on certain classes of licensees to prevent severe financial burden. Therefore, in the coming weeks, I intend to issue a COM which will request the CFO to conduct a review of the NRC services to identify the areas that as a matter of equity should be recovered, in part or in whole, through the Treasury's general revenue rather than through fees.

In addition, while OBRA-90 has contributed to the difficult position we now face in devising a fee schedule for FY 1999, our past practices of administering the fee schedule seem to have made matters worse. Utilizing the "percent change method" since 1995 has created a significant gap between what some material licensees pay in fees and what they should pay in relation to actual cost of NRC services. While this method benefitted various materials licensees in the past by in essence perpetuating a subsidy for services provided to them, it is now responsible for imposing severe fee increases on select classes without providing sufficient warning. This year the problem is made worse by the increase in Part 170 hourly rates. I understand that the "percent change method" was adopted to bring some stability to our fee recovery process. However, I believe we will in fact contribute to the financial instability of our licensees if we subject them to unpredictable substantial fee increases when we rebase every few years. Therefore, I agree with Commissioner Diaz that in light of the experience gained with the 1995 policy on annual fees, the staff should, in the Federal Register notice for this rulemaking, specifically solicit comments on whether we should continue with the policy of rebaselining every several years, or return to annual rebaselining.

Finally, regardless of which Option is finally approved by the Commission, the agency will have to defend the significant fee increases imposed on various materials licensees. The increase is indefensible unless we can clearly convince our stakeholders that our materials program is efficiently and effectively carried out. Thus, I urge NMSS to thoroughly review its programs to identify process efficiencies and potential resource savings, especially savings that can be gained as more states become Agreement States.

3/1/99



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