OGC insert for Part 171 Comment 1 AG08-2/PDR

From: Brooke Poole
To: Glenda Jackson
Date: 5/28/99 12:46pm
Subject: Fee rule pp. 27-29

Attached is the revised portion of the fee rule which was not returned to you with the rest of the package yesterday evening. The attachment contains comment and response to comment C (1) - "Rebaseline with a 50 percent cap." We have no comments on page 29, except to add "(NMA)" after the first mention of the National Mining Association.

Thanks,
Brooke

CC: Catherine Holzle, Geraldine Fehst, Trip Rothschi...

1. Rebaseline with a 50 percent cap.

Comment. Nine commenters specifically addressed the two options presented by the NRC for rebaselining the FY 1999 annual fees: Option A, rebaseline without a cap, or Option B, rebaseline with a 50 percent cap on FY 1999 annual fee increases. Five commenters, uranium recovery licensees or persons representing the uranium recovery class, preferred the 50 percent cap, "if forced to choose." These commenters indicated that the cap would at least spread the annual fee increases for uranium recovery licensees over two years to lessen the drastic impact to their budgets for a given year. One uranium recovery commenter indicated that even the 50 percent increase is excessive when governmental inflation indexes indicate an inflation rate of 3 percent or less. The National Mining Association (NMA) stated that the uranium recovery licensees had no warning of how significant the increase in fees would be for FY 1999. Another commenter, a materials licensee, supported the cap, but stated that 50 percent was too high. This commenter recommended that all fee increases be capped at a level commensurate with the inflation rate. Three commenters, NEI, a reactor licensee, and a materials licensee, supported rebaselining without a cap. These commenters stated that rebaselining without a cap is more fair because it allows NRC to determine the amount of resources devoted to regulation of certain licensees and allocate the costs to those licensees. One commenter stated that the cap could result in an unfair allocation to some licensees of costs over the cap amount incurred for other licensees. NEI stated that it is inappropriate given the developing competitive environment in which nuclear licensees will operate or are already operating, to require all licensees to subsidize any licensee who received services costing more than the cap amount.

Response. The Commission is establishing rebaselined FY 1999 annual fees without a cap, after comparing the allocation of its FY 1999 proposed budget costs with those of FY 1995.

The Commission concluded that there have been significant changes in the allocation of agency resources among the various classes of NRC licensees. This fulfills the Commission's policy commitment made in the Statement of Considerations accompanying the FY 1995 fee rule (60 FR 32225) that base annual fees would be re-established (rebaselined) if there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees. Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with significant fee increases, establishing new baseline annual fees without a cap results in a fair and equitable allocation of costs among licensees.

The major purpose for the option to establish the FY 1999 rebaselined annual fees with a 50 percent cap was to provide greater fee stability than would be provided by rebaselining without a cap, and to provide advance notice to licensees of the full annual fees for their future budget planning purposes. There was, however, a lack of overwhelming support for the cap. Some commenters who chose the cap were in fact reluctant to support either option. Capping fee increases for a class or classes of licensees necessarily results in additional fees being assessed to other classes of licensees in order to recover approximately 100 percent of the budget as required by statute. A cap on FY 1999 fee increases has the potential to exacerbate concerns about the fairness and equity of licensees being charged for activities that do not directly benefit them. Based on these concerns, an evaluation of NRC budget allocation data, and the lack of overwhelming support from commenters, the Commission has decided against adopting a cap on fee increases for FY 1999.

Pete Robideau's Comments
5/28/99
AG08-2
PDR

licensees, the remaining licensees are required to pay a greater share of NRC's costs, with no increase in benefits. Some commenters stated that NRC's budget should be reduced consistent with the reduction in the number of licensees. Others specifically requested that the NRC consider options to address the effects of increased license fees and a declining number of licensees. Commenters also indicated that there should be lower NRC costs, translating to lower fees, as the agency moves towards a performance-based regulatory structure. Although some commenters recognized NRC's efforts to downsize and streamline its programs, they indicated that the NRC should find ways to further streamline and operate more efficiently. Some commenters requested that the increased fees be reconsidered based on the low risk and safety records associated with the licensed activities. NEI cited several reasons why the NRC should consider decreasing its future budget requests, such as NRC's revised oversight process which should result in decreased inspection hours, a declining number of industry events that should lead to fewer reactive and initiative inspections, and the NRC's revised enforcement process which should require fewer agency resources. NEI also suggested that NRC consider additional changes to its organizational structure, such as eliminating the regions, and reduce the resources related to research activities.

Response. The NRC's budget, which is carefully scrutinized and reviewed by OMB and Congress prior to approval, reflects the minimum resources necessary to carry out its health and safety mission. The NRC is continuing its streamlining efforts and constantly looks for ways to further improve its operations; however, some of the NRC's streamlining initiatives and the activities required to transition to performance-based licensing require an initial expenditure of resources before the results of those actions are realized. The rebaselined annual fees, which increased for some classes and decreased for other classes, reflect the budgeted costs

Constant 1993 dollars

Fiscal Year (FY)	1993	1994	1995	1996	1997	1998	1999
Budget ($ millions)	540.0	522.4	498.7	439.7	434.1	427.0	412.5
Difference from FY1993 ($ millions)		17.6	41.3	100.3	105.9	113.0	127.5

The rebaselined FY 1999 annual fees reflect the budgeted costs for each class of licensee, less the estimated Part 170 collections for that class for FY 1999. The FY 1999 annual fees for materials licenses subject to "flat" Part 170 fees also reflect the results of the biennial review of fees as required by the Chief Financial Officer's Act, and the inclusion of the budgeted costs for license amendments, renewals, and inspections. The FY 1999 annual fees increased for certain categories of these materials licensees; however, these licensees are no longer required to pay Part 170 fees for amendments, renewals, and inspections. Although fewer resources may be needed to complete licensing reviews and conduct inspections for a particular class of licensees as the number of licensees in the class declines, there is not necessarily a correlation between the number of licensees and the agency's regulatory oversight mission. For instance, the need for rulemaking is not diminished as the number of licensees decrease. However, a portion of the costs associated with certain rulemaking and other generic activities is allocated to the annual fee surcharge based on the ratio of Agreement States licenses to NRC licensees in the affected class of licensees. The surcharge costs are then assessed to all classes of licensees based on their share of the budget. As a result, the full economic impact of additional Agreement States and the resulting loss of NRC licensees is not borne entirely by the affected class. The NRC's budgets are outside the scope of this rulemaking and therefore commenters' suggestions regarding future NRC budgets are not