

## **POLICY ISSUE NOTATION VOTE**

September 15, 2005

SECY-05-0164

FOR: The Commissioners

FROM: Jesse L. Funches  
Chief Financial Officer

SUBJECT: ANNUAL FEE CALCULATION METHOD

PURPOSE:

This paper requests that the Commission eliminate its requirement that the Office of the Chief Financial Officer calculate annual fees two ways each year.

BACKGROUND:

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires that the NRC recover most of its budget authority each year prior to the end of the fiscal year. To meet the requirements of OBRA-90, each year the NRC publishes a rule that establishes two types of fees: (1) fees for services under 10 CFR Part 170 to recover special benefits to identifiable applicants and licensees, and (2) annual fees under 10 CFR Part 171 to recover generic and other regulatory costs not otherwise recovered under Part 170.

The NRC uses one of two methods to determine the amounts of the annual fees established in the fee rule. One method is "rebaselining," for which the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and subclasses of licensees. The second method is the "percent change" method, for which fees are revised based on the percent change in the total budget, taking into account other adjustments, such as the number of

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licensees and the projected revenue to be received from Part 170 fees.

Until Fiscal Year (FY) 1996, annual fees were determined using the rebaselining method. In an effort to stabilize fees, the NRC decided to adjust annual fees using the percent change method beginning in FY 1996, unless there was a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. Fees were determined using the percent change method in the FYs 1996 - 1998 fee rules.

The NRC rebaselined fees in the FY 1999 fee rule, and solicited comment on the use and frequency of the percent change method. Some commenters, such as NEI, supported rebaselining every year, believing that this method best supports the accurate alignment of costs to fee classes and the in-depth review needed to maximize agency efficiency. Other commenters appreciated the fee stability provided by the percent change method. In response to these comments, the Commission determined that annual fees should be rebaselined every three years, or more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees.

In its February 4, 2000, Staff Requirements Memorandum (SRM) for SECY-00-0012, "FY 2000 Proposed Fee Rule" (ML023250305), the Commission directed staff to use the percent change method to determine FY 2000 fees, and stated that the staff should continue to calculate annual fees by both the rebaseline and percent change methods, and to provide a summary of the results when making its recommendation to the Commission regarding the most appropriate method to use to calculate annual fees (as OCFO had done in FYs 1997 - 1999).

For the FYs 2001 and 2002 fee rules, OCFO continued to calculate annual fees using two methods, and provided these results to the Commission when making its recommendation. For both years, the Commission determined that annual fees should be rebaselined. In the SRM for SECY-02-0020, "FY 2002 Proposed Fee Rule and Partial Response to the August 9, 2001, Chairman's Tasking Memorandum" (ML020580709), the Commission again directed staff to continue the policy of calculating annual fees using two methods. For the FYs 2003 - 2005 fee rules, the staff requested each year an exception to the requirement to calculate fees by both methods, and simply rebaseline fees, because of substantial changes in the budget and the NRC's desire to issue the fee rule as early in the year as possible (which was made more difficult given the often uncertain budget situation). The Commission approved these requests.

#### DISCUSSION:

I am requesting that the Commission eliminate the requirement that OCFO calculate annual fees two ways each year for three reasons: (1) the fee rule could be issued earlier in the fiscal year, (2) rebaselining is usually appropriate because there is often a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees, and (3) delaying rebaselining can result in larger fee changes in the years when fees are rebaselined. These reasons are explained further below. I expect that in most years, annual fees would be rebaselined, although the use of the percent change method would remain an

option should there be a year in which there are no significant changes to the total budget or individual programs for fee classes.

### **1. Issuing the Fee Rule Earlier**

To meet the OBRA-90 requirements, the final fee rule must become effective no later than the end of August each year. This means that the proposed fee rule must be published in the *Federal Register* by late March, and that the final fee rule must be published by late June.<sup>1</sup> The fee calculation process for a given fiscal year begins in July of the previous year and requires collaboration with all major NRC offices.

Eliminating the requirement to calculate fees both ways would allow the staff to issue the fee rule as early as possible each year. The Commission directed staff in its SRM for COMSECY-03-0013, "FY 2003 Proposed Fee Rule" (ML030860514), to ". . . continue to develop future fee rules as early in the fiscal year as possible to ensure that we continue to meet the deadline to collect our fees by the end of the fiscal year."

One factor that affects the timing of the fee calculations is the date of passage of the NRC's appropriations bills. To minimize rework, fees are not generally finalized until passage of NRC's appropriations bill for that year. For FYs 1998 - 2001, the NRC's appropriations bills were passed in September or October. However, in FYs 2002 - 2005, the NRC's appropriations bills were passed anywhere from mid-November to February of the following year, and the fee calculations were required to factor in budgetary rescissions as appropriate.

In years when Congress approves the budget requested by the NRC without substantial changes, staff are able to issue the fee rule approximately one month earlier if not required to calculate fees using both methods and present results to the Commission. In years where there are changes in the NRC's budget approved by Congress (which is likely to occur this year), the time difference is even larger because both types of calculations will need to be started (and possibly completed) with one budget and then revised for the final approved budget.

### **2. Rebaselining Is Usually the Appropriate Fee Calculation Method**

The second reason for eliminating the requirement to calculate fees by two methods is that the regulatory environment is such that rebaselining will likely be warranted in most years. Changes occurring in FY 2006 and beyond that warrant a rebaselining of fees include those in the areas of new reactor licensing, homeland security (including the removal of certain homeland security costs from the fee base beginning in FY 2007, per the Energy Policy Act), and new regulatory authority for 'Naturally Occurring and Accelerator Produced Radioactive Material' (NARM). Fees were last recalculated using the percent change method in FY 2000; each year since the NRC determined that rebaselining was appropriate.

### **3. Delaying Rebaselining Can Result in Larger Fee Changes**

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<sup>1</sup>The license fee rule is considered a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, thus, the final rule does not take effect until 60 days after publication in the *Federal Register*.

In its report, "NRC's License Fee Development Process Needs Improvement," dated December 14, 1999, the OIG expressed concern about the use of the percent change method over an extended period, noting that it only postpones the impacts of rebaselining. For example, OIG noted that in FY 1999, when fees were rebaselined after three years of using the percent change method, the operating power reactor annual fee decreased by thirteen percent, while the annual fees for certain uranium recovery licensees increased by more than 200 percent, "[t]hus, the anticipated stability and predictability of the percent change method was ultimately negated." This report also expressed concern that, because the percent change method is not based on the cost relationship of providing services, fees become inequitable over time because some licensees are subsidizing others in between rebaselining years. This concern, arising out of our experiences with use of these two calculation methods, is another reason I believe the percent change method should be used infrequently and that the requirement to calculate fees two ways every year is therefore no longer necessary.

RECOMMENDATION:

Based on the foregoing discussion, I recommend that the Commission eliminate its requirement that OCFO calculate annual fees two ways each year.

If this recommendation is approved, I expect that in most years annual fees would be rebaselined. The use of the percent change method would remain an option should there be a year in which there are no significant changes to the total budget or individual programs for fee classes, in which case I will notify the Commission. The FY 2006 fee rule would note the presumption in favor of rebaselining when determining annual fees for FY 2006 and beyond.

SCHEDULE:

Because staff would need to allow extra time to calculate fees two ways and present those results to the Commission, I request a Commission decision on the above recommendation by October 7, 2005.

Note I plan to send to you, in early November 2005, a Commission paper regarding FY 2006 fee policy issues, along with the FY 2006 fee rule schedule. (This is the usual process followed, which allows Commission input into fee policy decisions prior to the completion of the proposed rule each year.)

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections.

***/RA/ P. Rabideau (for)***

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