

No. 93-142
Tel. 301/504-2240

FOR IMMEDIATE RELEASE
(Wednesday, September 29, 1993)

NRC REQUESTS COMMENT ON PROPOSED RULE RESTORING
ANNUAL FEE EXEMPTION FOR EDUCATIONAL INSTITUTIONS

The Nuclear Regulatory Commission has decided to reconsider a recent rule change that eliminated the exemption from annual fees for nonprofit educational institutions.

The Commission, with all the Commissioners agreeing, has granted a petition of reconsideration of the rule change issued on July 20, 1993 and is seeking public comment on a new rulemaking that would restore the generic exemption. The petition requesting reinstatement was submitted by Cornell University and 11 other universities and colleges that hold non-power reactor licenses from the NRC. The proposed rulemaking will address no other annual fee issues.

The Commission's rule change in July was in response to a March 16 ruling by the U.S. Court of Appeals for the District of Columbia circuit. That ruling remanded issues related to the NRC's licensing fee schedule, including further consideration of the NRC's practice of exempting nonprofit educational institutions from licensing fees. The court ruling cast doubt on the NRC's rationale that the institutions are unable to pass through the costs of the fees to their customers.

In reaction to the court decision, the Commission initially proposed to retain the exemption and asked specifically for public comments on the court's suggestion that perhaps the exemption could be justified if "education yields exceptionally large externalized benefits that cannot be captured in tuition or other market prices."

After receiving only a few comments supporting continued generic exemption and some comments requesting abandonment, the Commission decided reluctantly that, in view of the court decision and the administrative record, it could not justify a generic educational exemption for non-power reactor or material licensees. The Commission also informed the educational licensees that they would have to pay annual fees beginning in fiscal year 1993.

Almost immediately the Commission began receiving letters from many colleges and universities commenting on the change in its fee policy. The formal petition from Cornell and 11 other universities contended that there are a number of benefits that educational institution research reactors provide to both the nuclear industry and the public at large. Prominent was the continued training of nuclear scientists and engineers, but the petitioners also noted that nuclear technology is used in fields as varied as medicine, geology, archaeology, food science and textiles.

As a result of more detailed information and arguments developed in the petition, and after careful reflection, the Commission granted the request for a new rulemaking.

However, the Commission is interested in more data on the benefits of non-power reactors and the use of licensed nuclear materials in education in its broadest sense in the expectation that more data may well substantiate the argument in the petition for reconsideration that non-power reactors and the uses of licensed nuclear materials in educational activities are prime examples of activities which provide "externalized benefits" warranting public support.

With the Commission proposing to restore a generic exemption, it is not necessary for formerly-exempted educational licensees to apply for individual public interest exemptions. The Commission requests nonprofit educational licensees not to seek such exemptions at this time.

Written comments on the proposed rule should be submitted within 30 days after publication in the Federal Register on September 29 to: Secretary, Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

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