

October 27, 2001

MEMORANDUM TO: David B. Matthews, Director, DRIP
Bruce A. Boger, Director, DIPM
John A. Zwolinski, Director, DLPM
Jack R. Strosnider, Director, DE
Gary M. Holahan, Director, DSSA
James E. Lyons, Director, NRLPO

FROM: Michael J. Case, Director **/RA/**
Program Management, Policy Development and Planning Staff

SUBJECT: FEE WAIVERS UNDER 10 CFR PART 170

I have attached two recent memoranda (Attachments A and B) from OCFO regarding requests for exemption from license fees under the provisions of 10 CFR Part 170. These memoranda request information from the NRR staff and provide information to the staff on fee exemption criteria used by OCFO.

Attachment A asks for assistance in estimating requests for exemptions from Part 170 fees (first-of-a-kind and one-of-a-kind projects or pilot plant licensing actions or inspections) for the next twelve months beginning November 2001. I would appreciate your response to this question by November 7 so that we can meet OCFO's target date. You should send your estimates to Michael Kaltman (mxk2, x2905) who will coordinate the office's response.

Attachment A also asks for the names of the sites and the licensees who volunteer and are accepted into The Safeguards Performance Assessment Pilot Program (SECY-01-0060). The names of the participants should be supplied directly to the Chief, License Fee and Accounts Receivable Branch (LFARB).

Finally, OCFO is requesting that all future fee exemption requests be forwarded to the Chief, LFARB, prior to coding any fee waiver requests as non-fee billable (my emphasis, see Attachment B). Your staff should be made aware of this requirement; however, PMAS encourages feedback if this procedure negatively impacts your work process. This feedback should also be provided to Michael Kaltman.

These memoranda should be provided to your staff as they provide information that would be helpful to those who become involved in exemption requests under Part 170.

Attachments: As Stated

cc: J. Johnson
B. Sheron
R. Perch
M. Boyle
S. Magruder
C. Lauron
D. Skeen
M. Gamberoni
M. Marchall
D. Skay
P. Ray

MEMORANDUM TO: David B. Matthews, Director, DRIP
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Gary M. Holahan, Director, DSSA
James E. Lyons, Director, NRLPO

FROM: Michael J. Case, Director
Program Management, Policy Development and Analysis Staff

SUBJECT: FEE WAIVERS UNDER 10 CFR PART 170

I have attached two recent memoranda (Attachments A and B) from OCFO regarding requests for exemption from license fees under the provisions of 10 CFR Part 170. These memoranda request information from the NRR staff and provide information to the staff on fee exemption criteria used by OCFO.

Attachment A asks for assistance in estimating requests for exemptions from Part 170 fees (first-of-a-kind and one-of-a-kind projects or pilot plant licensing actions or inspections) for the next twelve months beginning November 2001. I would appreciate your response to this question by November 7 so that we can meet OCFO's target date. You should send your estimates to Michael Kaltman (mxk2, x2905) who will coordinate the office's response.

Attachment A also asks for the names of the sites and the licensees who volunteer and are accepted into The Safeguards Performance Assessment Pilot Program (SECY-01-0060). The names of the participants should be supplied directly to the Chief, License Fee and Accounts Receivable Branch (LFARB).

Finally, OCFO is requesting that all future fee exemption requests be forwarded to the Chief, LFARB, prior to coding any fee waiver requests as non-fee billable (my emphasis, see Attachment B). Your staff should be made aware of this requirement; however, PMAS encourages feedback if this procedure negatively impacts your work process. This feedback should also be provided to Michael Kaltman.

These memoranda should be provided to your staff as they provide information that would be helpful to those who become involved in exemption requests under Part 170.

Attachments: As Stated

cc: J. Johnson
B. Sheron
R. Perch
M. Boyle
S. Magruder
C. Lauron
D. Skeen
M. Gamberoni
M. Marchall
D. Skay
P. Ray

Distribution: PIMB R/F NRR Mail Room (YT020010163) TAC #: M3162

ADAMS ACCESSION NUMBER: ML012960495

* Please see previous concurrence

OFFICE	PIMB:PMAS	PIMB:PMAS	PMAS:NRR	
NAME	MKaltman	MMacWilliams	MCase	
DATE	10/24/2001	10/24 /2001	10/27/2001	

OFFICIAL RECORD COPY

Attachment A
ML012890428

October 11, 2001

MEMORANDUM TO: Michael J. Case, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

FROM: Charlotte L. Turner, Acting Director R/A
Division of Accounting and Finance
Office of the Chief Financial Officer

SUBJECT: REQUESTS FOR EXEMPTION FROM 10 CFR PART 170 FEES

I am requesting your assistance in obtaining information from the staff about pending 10 CFR Part 170 exemption requests and providing information to the staff on fee exemption criteria. We have noticed a recent increase in requests for exemptions from Part 170 fees, especially for topical reports. In addition, we receive requests for exemptions citing Footnote 4 to 10 CFR 170.21 for license or renewal applications.

Many of these requests are being denied because they do not meet the intent of the fee exemption provided in Footnote 4 to 10 CFR 170.21. Footnote 4 only applies to Special Projects, such as topical reports. It does not apply to applications for license renewals or amendments. Footnote 4 to 10 CFR 170.21 provides that fees will not be assessed for requests/reports submitted to the NRC: (a) in response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue; (b) in response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or (c) as a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts.

We are hopeful that the clarification to the fee waiver criteria that was made in the FY 2001 final fee rule (66 FR 32452) will minimize the number of such requests. In the FY 2001 final fee rule, NRC clarified, consistent with the statements of consideration for the FY 1994 rule (59 FR 36895), that the intent of the fee waiver provisions was that the requests/reports must be submitted for the purpose of supporting NRC's [emphasis added] generic regulatory improvements or efforts for the fees to be waived.

Contact: Glenda C. Jackson, OCFO/DAF
415-6057

This office recently commented on SECY-01-0060, "The Safeguards Performance Assessment Pilot Program," dated April 5, 2001. Performance assessments or evaluations for which the licensee volunteers at NRC's request and which are selected by the NRC are exempted from Part 170 fees as provided in 10 CFR 170.11(a)(12). Therefore, there is no need for specific requests for those licensees who meet the provisions of this fee exemption. However, please provide the Chief, License Fee and Accounts Receivable Branch (LFARB), with the names of the sites and licensees that volunteer and are accepted into a pilot program in order for us to track those review activities exempted from Part 170 fees. Please note that this exemption applies only to performance assessments. It does not apply to pilot plants under any other program.

We are also requesting information from your staff regarding any anticipated requests for exemptions from Part 170 fees, e.g., first-of-a-kind and one-of-a-kind projects or pilot plant licensing actions or inspections. Please provide your best estimate of anticipated exemption requests for the next year to the Chief, LFARB.

Finally, as indicated in Jesse L. Funches' September 6, 2001, memorandum to Samuel J. Collins, (copy attached), please forward all future fee exemption requests NRR receives to the Chief, LFARB for an assessment of the applicability of fee waiver provisions. My staff will then contact your staff for any technical information that is needed to respond to the fee exemption requests.

Please provide your response to the above requests by November 9, 2001. This information is important for the initial planning stages for developing the FY 2002 fee rule. In addition, please pass on this fee exemption criteria to all appropriate NRR staff who would be in a position of receiving such exemption requests from industry or be coding staff effort for fee billing purposes. Thank you for your assistance.

Attachment: September 6, 2001, Memo from Jesse L. Funches
to Samuel J. Collins, w/o attachments

cc: Samuel J. Collins, NRR

September 6, 2001

MEMORANDUM TO: Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

FROM: Jesse L. Funches R/A
Chief Financial Officer

SUBJECT: TWO REQUESTS FOR FEE WAIVER FOR REVIEW OF
COMBUSTION ENGINEERING OWNERS GROUP (CEOG)
TOPICAL REPORTS

I am responding to your February 22, and February 26, 2001, memoranda recommending that I waive the Part 170 fees for the review of the CEOG's Topical Reports, CE-NPSD-994, -995, -996, "Joint Application Reports" and CE NPSD-1186, "Technical Justification for Risk Informed Modification to Selected Required Action End States for CEOG PWRs."

Footnote 4 to 10 CFR 170.21 states that fees will not be assessed for requests/reports submitted to the NRC "... (b) in response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or (c) as a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts." Although the NRC may have realized some benefit from the review and approval of the subject topical reports, the reports were submitted and reviewed for the primary purpose of providing an approval to CEOG so that the reports could be used by CEOG and its members in the future, as evidenced by the letters from CEOG transmitting the reports. Therefore, these reports do not meet the criteria for the fee waiver.

The staff has prepared responses to CEOG denying the fee waiver requests. I would appreciate receiving your concurrence on the attached letters by September 14, 2001.

We have noticed an increase in the number of fee waiver requests that do not meet the criteria in Footnote 4. I am hopeful that the clarification to the fee waiver criteria that was made in the FY 2001 final fee rule (66 FR 32452) will help to minimize the number of such requests.¹ I also believe that we will improve the process for responding to future fee waiver requests, by

S. Collins

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¹The NRC clarified that the intent of the fee waiver provisions, consistent with the statements of consideration for the FY 1994 rule (59 FR 36895), is that the requests/reports must be submitted for the purpose of supporting NRC's [emphasis added] generic regulatory improvements or efforts for the fees to be waived.

forwarding all specific fee waiver requests you receive for an assessment of the applicability of fee waiver provisions to the Chief, License Fee and Accounts Receivable Branch (LFARB). My staff will then contact your staff for any technical information that is needed to respond to the fee exemption requests. I would also appreciate your staff contacting the Chief, LFARB (415-7544) prior to coding any fee waiver requests as non-fee billable.

I appreciate your continued cooperation and support for the NRC's License Fee Program. Please call me if you have any questions.

Attachments: As stated