

## Tomczak, Tammy

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**From:** Riner, Kelly  
**Sent:** Monday, August 27, 2018 9:49 AM  
**To:** Pelke, Patricia; Fees\_RegionIII  
**Subject:** RE: USGS Does not Agree with Fee Categories Assigned to LN 24-12728-01; ML18221A302

Patty,

My apologies in the delay getting back to you on this one. We had to do some research on our end and I needed to follow up with Fee Policy, since they are the ones responsible for the fee rule and its interpretation. So, it appears, based on the write up from fee policy below, that OCFO made a mistake in granting the fee waiver for the 3P fee category for USGS. As you discovered, it is part of their licensed activities and, therefore, should be charged. We will not be going back to 2008 to charge what they should have paid, but will be charging for this fee category in the past. If you need me to reach out to the licensee, please let me know.

From Fee Policy: "USGS is licensed to use Hydrogen-3, Carbon-14, and Phosphorus-33 with an authorized use of "For use as tracers in biological system studies for research and development as defined in 10 CFR 30.4. They are also licensed to use Nickel-63 with an authorized use of "To be used for sample analysis in compatible gas chromatography devices that have been registered either with NRC under 10 CFR 32.210 or with an Agreement State and have been distributed in accordance with an NRC or Agreement State specific license authorizing distribution".

Fee Category 3M has a description of "Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution".

Since fee category 3M only authorizes possession and use of byproduct material issued under Part 30 and USGS has an authorized use of Nickel-63 on the license under 10 CFR Part 32, it is my belief that the license should be categorized as a 3M and 3P. Also, Environmental Protection Agency (license number 34-12736-02, docket 030-13379) is currently authorized to use Nickel-63 in the same way and they also pay 3M and 3P. One additional factor that would lend to USGS being categorized as a 3M and 3P is that the process has changed from OCFO analysts to the Regional/Program office staff being categorized as the "experts" on how the license should be categorized. In addition, Region 3 staff have performed a recent review and determined the appropriate program codes are assigned which crosswalk to the fee categories 3M and 3P being invoiced."

Let me know if you need anything further.

*Kelly Riner*

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**From:** Pelke, Patricia

**Sent:** Thursday, August 09, 2018 1:08 PM

**To:** Fees\_RegionIII <Fees\_RegionIII@nrc.gov>

**Cc:** Riner, Kelly <Kelly.Riner@nrc.gov>

**Subject:** USGS Does not Agree with Fee Categories Assigned to LN 24-12728-01; ML18221A302

As part of the Phase B data review, we identified that a secondary program code should be assigned to this license for gas chromatographs. We added the Secondary Program Code 03123 and (Fee Category 3P) in WBL and I informed the licensee via attached email in June.

The licensee doesn't agree with the secondary program code and assigned 3P fee category for their license and submitted a letter (attached) referencing a 2008 confirmation from Mona S Williams that Fee Category 3P was included as part of Fee Category 3M, and they were not required to submit fees for 3P; please refer to the licensee's letter attached.

Is there some guidance available regarding whether or not licensees paying fees under 3M are exempt from 3P fees (if they possess gas chromatographs) or was there a policy change? I don't think Part 171 addresses this issue in any footnotes. We assigned the 3P fee category to other licenses during the Phase A data review – I'm not aware of any guidance regarding fee relief.

I plan to contact the licensee about possessing the gas chromatographs under a general license – but in the interim, can you please provide ARB determination for assigning Fee Category 3P for this license. Thanks –  
Patty