



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 7, 2018

CHIEF FINANCIAL
OFFICER

Dr. David M. Slaughter
President and Reactor Administrator
Aerotest Operations, Inc.
3455 Fostoria Way
San Ramon, CA 94583

Dear Dr. Slaughter:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated June 4, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18163A111), and supplemented on August 22, 2018 (ADAMS Accession No. ML18240A141) in response to the NRC staff's July 16, 2018, Request for Supplemental Information (ADAMS Accession No. ML18186A578). Your letter, as supplemented, requests fee waiver exemptions from paying licensing and inspection fees under Title 10 of the Code of Federal Regulations (10 CFR) 170.11(b) and 171.11(c). Your letter, as supplemented, requests exemptions from paying Part 170 and 171 fees based on such exemptions being in the public interest. Additionally, your letter, as supplemented, requests temporary relief from paying Part 170 and 171 fees. Furthermore, your letter, as supplemented, requests that the NRC permit Aerotest to pay significantly reduced fees because it is a small entity.

The NRC has established regulations for the granting of fee exemptions under 10 CFR 170.11, and 10 CFR 171.11, "Exemptions," for which licensees may apply in accordance with 10 CFR 170.5, "Communications." I have reviewed your request pursuant to the regulations at 10 CFR 170.11(b) and 10 CFR 171.11(c):

10 CFR 170.11(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

10 CFR 171.11(c) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest.

First, I find that your fee-waiver request does not meet the criteria for a public interest exemption pursuant to 10 CFR Part 170.11(b) or 10 CFR 171.11(c). In your letter, as supplemented, you state that Aerotest can provide unique research capabilities. But your letter, as supplemented, does not show that these fee exemptions would be "in the public interest."

Your letter, as supplemented, explains that Aerotest plans to perform research, development, and education activities, which you state are in the public interest, yet by this reasoning, electricity generation by for-profit fee-billable nuclear power licensees, or medical isotope production by for-profit fee-billable companies, could similarly be argued to be activities that are in the public interest. Therefore, performing activities that are in the public interest does not equate to a fee exemption being in the public interest. I also note that other commercial, for-profit research reactor licensees also pay 10 CFR Part 170 and 171 fees similar to Aerotest.

Your letter, as supplemented, also requests a temporary exemption from paying fees until Aerotest updates its regulatory program (i.e., completes its license renewal which is in progress), or until 10 CFR Parts 170 or 171 are changed or Aerotest gets a permanent exemption from 10 CFR Parts 170 or 171 to allow it to pay reduced 10 CFR Parts 170 and 171 fees as a small entity. You cite 10 CFR 50.12 as the basis for this because 10 CFR 50.12(a)(2)(v) states that exemptions to a 10 CFR Part 50 regulation may be granted if the exemption is only temporary and the licensee has made good faith efforts to comply with the regulation. However, 10 CFR 50.12 is not the established regulation for the granting of fee exemptions. Additionally, although criteria similar to those in 10 CFR 50.12 could potentially be applied to help support a case for exemptions to the regulations in other parts of 10 CFR, 10 CFR 50.12(a)(2)(v) specifies that a temporary exemption to a regulation may be granted if a licensee has made a good faith effort to comply with the same regulation. Your letter, as supplemented, requests that Aerotest be granted exemptions for fee regulations different from regulations associated with Aerotest's "good faith efforts to update its regulatory program." Therefore, I am unable to grant Aerotest temporary relief from paying 10 CFR Parts 170 and 171 on the basis of 10 CFR 50.12.

Finally, your letter, as supplemented, requests that the NRC permit Aerotest to pay significantly reduced fees because it is a small entity and submitted NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171," to apply for small entity status under section 1B – a small business with revenue less than \$485,000. The Small Business Act, 15.U.S.C. § 632, allows federal agencies to request approval of its size standards from the Small Business Administration (SBA). The NRC's current small business size standards were approved by the SBA, which uses the North American Industry Classification System as a basis for its size standards. The regulations at 10 CFR 171.16(c) state that certain NRC licensees may pay reduced annual fees if they qualify as small entities—although it does not include licensees authorized to conduct activities under 10 CFR Part 50.

In your request, you specifically reference that when the Aerotest Radiography and Research Reactor (ARRR) facility was transferred on July 17, 2017, to Nuclear Labyrinth, LLC, a small entity was created, and that the creation of a small entity licensed under Part 50 means that the NRC should now consider whether small entities licensed under 10 CFR Part 50 should be entitled to reduced fees.

One consideration that you proposed is applying the two-tiered fee structure used for other small entities, which would place Aerotest in the lower tier, equating to paying a Part 10 CFR Part 171 annual fee of \$850.00. You also proposed using a 90 percent relief adjustment of projected hours charged for the licensing and inspection activities of the ARRR under 10 CFR Part 170, which would result in invoice LFB-18-5687 being adjusted from \$81,473.46 to \$8,147.35.

Aerotest's situation represents a unique set of facts in that, although it is a 10 CFR Part 50 licensee, it is a small entity similar to other classes of licensees. Currently, Aerotest is paying increased hourly fees due to its license renewal, amendment, and restart activities. Once these one-time activities are complete, I note that, similar to some small materials licensees, Aerotest's full annual fee could constitute the majority of the fees it pays each year (although Aerotest would still pay hourly inspection and project management fees, and hourly fees for any future licensing actions that it requests). Although the small entity regulation does not apply to 10 CFR Part 50 licensees, based on the information that you provided in your letter, as supplemented, I am able to grant your request for a one-time fee exemption, to reduce your 10 CFR Part 171 annual fee to \$850.00 under 10 CFR 171.11(c). However, I deny your request to receive significantly reduced 10 CFR Part 170 fees. I note that small entity materials licensees pay full cost fees for licensing, inspection activities, etc. Therefore, I am unable to grant Aerotest's request to reduce 10 CFR Parts 170 fees based on it being a small entity.

Along those lines, 10 CFR Part 171.11(a) provides in pertinent part:

All requests for exemptions must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered.

Therefore, in subsequent years, the NRC requests that Aerotest submit a new request for a fee exemption for each fiscal year for which it desires an exemption. Such requests must include sufficient documentation to substantiate Aerotest's fee-exemption request.

If you have any technical questions regarding this matter, please contact Mr. Edward Helvenston at 301-415-4067. Please contact Mr. William Blaney, of my staff, at 301-415-5092, for any fee-related questions.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

SUBJECT: LETTER TO DAVID M. SLAUGHTER, AEROTEST FEE WAIVER RESPONSE TO REQUEST DATED JULY 16, 2018; RESPONSE LETTER DATED November 7, 2018

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