



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

SEP 20 1986

MEMORANDUM FOR: C. James Holloway, Jr.,  
Acting Director License Fee Management Staff, ADM

FROM: Ronald M. Smith, Attorney  
Office of the General Counsel

SUBJECT: EXEMPTIONS FROM FEES PURSUANT TO  
10 CFR 170.11(A)(4)

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Reference is made to your memoranda of September 4 and September 9, 1986, respectively, which requested our opinion regarding the interpretation and application of the exemption provisions contained in 10 CFR 170.11(a)(4). Specifically, you provided further background on the issue of how this provision should be interpreted, particularly in light of past agency practice. To summarize, the NRC has limited exemptions under this provision to those instances where the licensed material was used in the teaching and training of students. Similarly, use or possession of licensed material by nonprofit educational institutions for "medical purposes" has been limited for exemption purposes to those instances where the "medical purpose" directly involved the teaching and training of students.

Further examination of the issue results in essentially the same advice as provided in the March 31, 1986 opinion regarding an exemption from fees for Marine Biological Laboratory. Although not directly on point, it is noteworthy that in establishing the annual charge requirement for the NRC under section 7601 of the Consolidated Budget Reconciliation Act of 1985 (COBRA), 99 P.Law 272 (1986), both houses of Congress expressed concern with the impact of current fee schedules on some entities. Specifically, it was stated in both the House and Senate "Statement of Managers re NRC Fees" that "It is the intention of the conferees that, because certain Commission licensees, such as universities, hospitals, research and medical institutions, and uranium producers have limited ability to pass through the cost of these charges (annual charges) to the ultimate consumer, the Commission should take this factor into account in determining whether to modify the Commission's current fee schedule for such licensees" (emphasis added). Based on the language in COBRA, it would not be unreasonable to conclude that the stated concern of Congress goes beyond the subject of annual fees or charges.

Closer examination of section 170.11(a)(4) indicates that it lends itself to much broader interpretation. When read in its entirety, this section also provides that the exemption from fees applies to a "license...issued to a nonprofit educational institution...for byproduct material...to be used...in connection with a facility...used for teaching, training, or medical purposes, except human use" (emphasis added). Read literally, it could be concluded that any use of the license, so long as that use is connected to

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the nonprofit educational institution, would be exempt from fees. However, such a broad application of the exemption could be considered to be contrary to the public policy contained in the exemption. For example, some work done by nonprofit educational institutions may not be done purely for educational purposes.

Based on this opinion and the opinion in our March 31 memorandum referenced above, there is no legal objection to applying an exemption under 10 CFR 171.11(a)(4) more broadly. Such a change in practice would be prospective in application. It would not be necessary to make any refund of fees previously collected. The recently stated intent of Congress in relation to this class of licensees, referenced above, could be cited as the basis for this change in practice. Accordingly, it is recommended that, consistent with the criteria in our March 31 memorandum and this opinion, appropriate exemptions be acknowledged under the provisions of section 170.11(a)(4). The criteria for applying an exemption are:

- (1) nonprofit educational institution;
- (2) licensed material used for teaching, training, or medical purposes, except human use; and.
- (3) use of licensed material for medical purposes must (a) be directly related to teaching or training of students, or (b) be accomplished in support of or for the purpose of advancing the teaching or training students, e.g., medical research by faculty or others in support of teaching or training objectives.

This approach does not greatly expand prior practice and is centered on education, i.e., teaching and training. However, not addressed is the issue of pure research or research done under Government contract by nonprofit educational institutions, as raised in some of the examples you provided. There may be a practical problem of determining whether research using licensed materials is for pure research, that is research done primarily to advance knowledge (no fee?), or toward a commercial end. Secondly, it may be unlikely that licensed material would be used exclusively for pure research or solely to carry out Government contracts. Nevertheless, if such were the case, it would seem appropriate to exempt those licenses under section 170.11(a)(4), as well. But, the key would be exclusive use of the licensed material for one or more of the purposes addressed in this opinion if further problems of interpretation are to be minimized. If these two categories were to be added the criteria might be as follows:

- Pure research: (1) nonprofit educational institution;
- (2) licensed material used exclusively for research for the purpose of advancing knowledge, i.e., pure

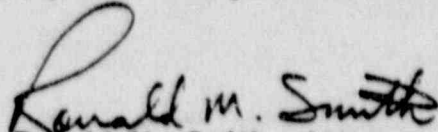
research, rather than toward a profit making result;  
and,

(3) the research is connected with teaching, training  
or medical purposes, except human use.

Government contract: (1) nonprofit educational  
institution;

(2) licensed material used exclusively to meet  
contractual requirements with the Federal  
government; and,

(3) the contract concerns teaching, training, or  
medical purposes, except human use.

  
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