



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

DEC 19 1989

AB 23-1

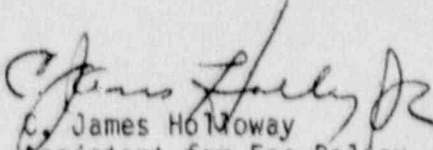
MEMORANDUM FOR: Nuclear Document System (NUDOCS)  
OWFN P1-37

FROM: C. James Holloway, Assistant  
for Fee Policy and Rules, OC

SUBJECT: REVISION OF FEE SCHEDULES: RADIOISOTOPE  
LICENSES AND TOPICAL REPORTS

Enclosed are documents of central relevance to the subject proposed rulemaking published in the Federal Register on December 1, 1989. Please prepare an index of these documents which would comprise the regulatory history of the proposed rulemaking.

Thank you for your assistance in this matter.

  
C. James Holloway  
Assistant for Fee Policy  
and Rules, OC

Enclosures:  
As stated

8912210207 891217  
PDR PR  
170 54FR49763 PDR

AD 23-1

PDR

MAR 30 1983

83 040 10657 XA

Docket No. 30-19311

Pennsylvania Power & Light Company  
ATTN: Mr. N. W. Curtis  
Vice President for Engineering  
Two North Ninth Street  
Allentown, Pennsylvania 18101

Gentlemen:

This refers to your August 5, 1981 application, as revised, and to our February 22, 1983 letter to your Company, concerning the fee requirements for low-level waste storage licenses. In the second paragraph of our letter, we inadvertently referred to "licenses authorizing storage of spent fuel." The phrase should have read, "licenses authorizing storage of low-level radioactive wastes."

In further reference to the exemption provision of §170.11(a)(3), it is not the intent of that exemption to exclude from fees licenses issued to facilities which authorize the possession, use or storage of radioactive materials generated from the operation of a reactor. While we recognize that the phrase in §170.11(a)(3), which reads, "incidental to the operation of a facility..." could be interpreted to apply to radioactive materials resulting from reactor operation, that is not the intent of the exemption. Instead, the exemption is intended to apply to materials licenses which are issued prior to the reactor operating license, and which authorize the use of byproduct material, source material, or special nuclear material in activities such as reactor startup, calibration of instrumentation and monitoring equipment, storage of SNM for use as fuel in the reactor, and for use as fission detectors. Because the costs incurred in issuing the aforementioned licenses are recovered as part of the total operating license fee, and since the materials will be used in or in connection with the operation of the reactor, it is not necessary to assess a separate fee for the issuance of those licenses. Consequently, the exemption provision of §170.11(a)(3) was provided.

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MAR 30 1983

Pennsylvania Power & Light Company - 2 -

As indicated in our February 22 letter, fees for low-level waste storage licenses are being assessed in accordance with §170.22. Based on the Licensing staff's preliminary review of the subject application, it has been determined that a Class IV amendment fee of \$12,300 is appropriate, since the review involves consideration of a complex issue and an extensive environmental impact appraisal. Therefore, please remit an amendment fee of \$12,300 to this office. If the Licensing staff's final review of your application indicates that the Class IV fee is inappropriate, you will be notified and any necessary adjustments will be made.

Sincerely,

Original Signed by  
Wm. O. Miller

William O. Miller, Chief  
License Fee Management Branch  
Office of Administration

DISTRIBUTION:  
License File (30-19311)  
Matls. Fee File  
PDR  
LPDR  
FSturz, NMSS  
← RMDiggs, LFMB  
CJHolloway, LFMB  
ASCabell, LFMB  
LFMB R/F (2)

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*WOM*

AD 23-1

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FEB 7 1985

MEMORANDUM FOR: Vandy Miller, Chief, Materials Licensing Branch, NMSS  
FROM: William O. Miller, Chief, License Fee Management Branch, ADM  
SUBJECT: APPLICABILITY OF FEE CATEGORY 3N FOR CALIBRATION AND TRAINING SERVICE LICENSES

The purpose of this memorandum is to seek assistance from your office in determining whether or not fee Category 3N of \$170.31 is still appropriate for licenses authorizing calibration and training services for other licensees. Fee Category 3N is applicable to "Licenses that authorize services for other licensees, except for leak testing and waste disposal pickup services." The fee charged for the review of an application for a new license or renewal is \$930, and \$120 for an amendment review, based on average review times of 16 staff-hours and 2 staff-hours, respectively.

Recently, two service-type licensees wrote to us about the amount of the renewal fee for their licenses. Stan Huber Consultants submitted a letter dated December 18, 1984, copy attached, which requested that we "place calibration, training, and leak test service firms in only the "3P" category." (Leak test licenses are currently subject to fee Category 3P). Stan Huber's License 12-17503-01 authorizes the use of byproduct material for calibration and training purposes for other licensees. As justification for their request, Stan Huber stated that, because of the low radiation exposure potential, the uncomplicated licensing review, and the relatively simple type of license, the 3P "All other" fee category would be more appropriate. They expressed concern too that the fee to be charged for their license renewal is almost as much as the fee assessed for a broad scope license.

Another licensee, Radiation Consultants of Mid-America, had their NRC license (24-18831-01) terminated on December 11, 1984, because they felt the renewal fee, which exceeds \$1,000, was not reasonable or justified, and that NRC's review costs for their license could not be that much. Their license had authorized equipment calibration and leak test services for medical facilities. (See the attached copies of Radiation Consultant's two October 25, 1984 letters to NRC).

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Vandy Miller, Chief

- 2 -

In addition to the above letters, this office has received several telephone inquiries which expressed concern about the amount of the fee for the subject licenses, particularly for those licenses authorizing calibration services. For the most part, the licensees have suggested that the fee charged for the review of calibration services should be more in the line with the fee charged for licenses authorizing leak test services.

Accordingly, we request that you inform us, based on the average amount of effort expended to conduct the review, whether or not the fees assessed under fee Category 3N are appropriate for the review of calibration and training service licenses. If you determine that the fee is appropriate, we will continue to assess the current fees. If, on the other hand, you determine that the review effort for these licenses is either less than the fees charged in Category 3N or is more comparable to the review performed for a leak test service license, then we will consider adjusting the fees charged for calibration and training service licenses, based on the revised average staff-hours provided to us by your office.

We appreciate your assistance in this matter.

William O. Miller, Chief  
License Fee Management Branch  
Office of Administration

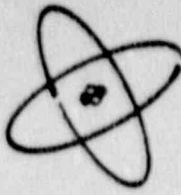
Attachment:  
As stated

DISTRIBUTION:  
License File  
License Fee File  
Pending Fee File  
ASCabell, LFMB  
LFMB R/F (2)

OFFICE ▶	LFMB:ADM	LFMB:ADM	LFMB:ADM	LFMB:ADM		
JRNAME ▶	ASCabell:rej	GJackson	CJMcDoway	WOMiller		
DATE ▶	2/6/85	2/6/85	2/7/85	2/7/85		

*WOM*

ML-30



# RADIATION CONSULTANTS of Mid-AMERICA, Inc.



X-RAY • NUCLEAR MEDICINE • THERAPY  
5500 BUENA VISTA • SHAWNEE MISSION, KANSAS 66205  
(913) 236-5126

AD23-1  
PDR

October 25, 1984

U.S. NRC  
LIC. FEE MGMT. BRANCH

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*Amor*

Mr. William Miller  
U.S. Nuclear Regulatory Commission  
Licensing Fee Management Branch  
Washington, D.C. 20555

Dear Mr. Miller:

I recently received a renewal application from the U.S. Nuclear Regulatory Commission. Radiation Consultants of Mid-America is involved in performing routine medical physics consulting for nuclear medicine facilities. Our consulting involves the use of equipment checks, record checks, and leak checks.

I was amazed at the licensing renewal fee required for our license. The fee is in excess of \$1,000.00. A fee this high places an unnecessary burden on the small consultants who service a few small accounts. In addition, I do not believe that the NRC's costs for reviewing a license renewal for a consulting program is \$1,000.

I discussed the licensing fee with Ms. B.J. Holt in the Regional Licensing Office in Chicago. She informed me that the licensing fees are being reviewed on an annual basis. I feel that the NRC should seriously consider reducing the fee structure for individuals doing routine medical physics consulting. The present fee structure will probably result in several people dropping their NRC license. This is the route that I plan to take. The fee is such that I do not feel that it is justified to maintain the NRC license.

If at some time in the future the fee structure is lowered to a point which makes the performance of services under an NRC license reasonable, I will reconsider applying for approval.

Sincerely,

*Emory Larimore*

Emory Larimore  
Radiological Physicist

EL/bc

U.S. NRC  
LIC. FEE MGMT. BRANCH

84 OCT 31 10:20

RECEIVED

8912010200 1p

*License terminated*



STAN A. HUBER CONSULTANTS, INC. □ 235 ESSEX LANE □ NEW LENOX, ILLINOIS 60451 □ (815) 722-8009

December 18, 1984

Glenda Jackson  
License Fee Management Branch  
Office of Administration  
Nuclear Regulatory Commission  
Washington, D.C. 20555

U.S. N.R.C.  
LIC. FEE MGMT. BRANCH

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AD 23-1  
PDR

8912010196

Re: Complaint regarding NRC License Fee Schedule and request to modify certain 10CFR Part 170 category classifications.

Ref: License #12-17503-01

Dear Ms. Jackson:

This to follow-up our phone conversation last week regarding the new NRC license fee schedule and what amount will be charged for license amendments and future renewal of my firm's NRC license.

Our consulting firm uses sealed sources for primarily calibrating survey meters and conducting some training courses. We also offer leak test services.

Currently, we appear to be classified under both "3N" for offering calibration services and "3P" for offering leak test services. Previously, I believe we were classified under 3L "All Other", in which renewals cost \$110 and amendments cost \$40. With the new "3N" and "3P" classifications, our renewal application would cost \$930 plus \$120 for a total of \$1,050. This represents about a ten fold (1,000%) increase in fees.

Please consider the following justifications for this request to place calibration, training, and leak test service firms in only the "3P" category:

1. All of our byproduct material sealed sources combined will typically total less than 500 millicuries. The largest sources we have are less than 100 mCi of Cs-137 and typically less than 200 mCi of I-125 sealed sources. Both of these larger type sources are in "permanent" lead shielded devices where we do not handle the sources themselves. This does not represent serious exposure potential nor complicated license reviews.
2. For the past seven years that we have been monitoring exposures, the highest readings reported on our TLD total body badges have been around 50 millirem per calendar quarter and well below the 10% of MPD ALARA management program level. Our typical exposure reports are "Minimal". This data supports our claim of low priority for radiation exposure potential and low risk of regulatory agency time involvement.

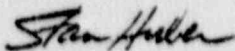
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3. The 3N plus 3P classification for our license is unfair and unjustifiable when compared to practically all of the other categories in Section 3 of the Part 170 fee schedule. For example, "3F" allows possession of "less than 10,000 Curies" for irradiation of materials and costs less than our current 3N plus 3P classification. In fact, our simple form of license currently costs just about as much as Broad Scope licenses! Certainly no one can claim our license is anywhere near as complex as a broad scope license.
4. In terms of "Impact on Small Business", this current fee structure is devastating. We do not charge \$150 to \$400 per diagnostic exam as hospitals do, nor do we have grant funding, nor do we charge hefty fees for irradiation or other higher priced services. This current fee structure could wipe out our profit margin for providing these services for more than a full year.
5. We do not believe it was the NRC's original intent to include calibration and related low cost services into the 3N category, but rather to keep these relatively simple type of licenses in the "All Other" category, now designated as "3F".

We trust the NRC will consider this request and the justifications herein as reasonable. I look forward to hearing about the timing when such a decision will be made, in the event this may require more than two or three months.

Sincerely,



Stan A. Huber  
President

SAH: amw



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

AD 23-1

PDR

8912010187

MAR 19 1985

89/1/29

MEMORANDUM FOR: William O. Miller, Chief  
License Fee Management Branch  
Office of Administration

FROM: Vandy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and Material Safety

SUBJECT: FEE CATEGORIES FOR SERVICE LICENSES

As requested in your memorandum dated February 7, 1985, we have reviewed the fee categories for service licenses. Our comments are as follows:

1. It is not appropriate to charge "other service" licensees the same low fee as "leak test" licensees. Leak testing involves no possession of radioactive material other than leak test samples themselves. Other service licenses involve quantities of radioactive material up to several hundred curies or even more. The review required for other services is inherently more complex.
2. The current 3N fees appear to be reasonable averages for all service license applications combined.
3. We now have five different program codes for service licenses (03221 - 03225). As long as we charge fees based on averages, there will be discrepancies in certain cases. It is true that some calibration licenses are less complex than a shielded irradiator license, which involves a lower fee.
4. The Stan A. Huber license does not involve large quantities of hazardous material, but it is a fairly complex license. Our recollection is that we have spent much more time on licensing actions for this license than the average.

For your information, we have attached FY-84 data on completed license cases. Because the cases were handled by all five regions and headquarters, the staff hours expended on these cases cannot be retrieved from the computer. For this reason and for reasons of consistency, we do not recommend that the fees for service licensees only be changed unless this is part of a comprehensive review and revision of Part 170. However, if LFMB believes that there is a pressing need to adjust the fees for service licenses, we suggest the following amendments:

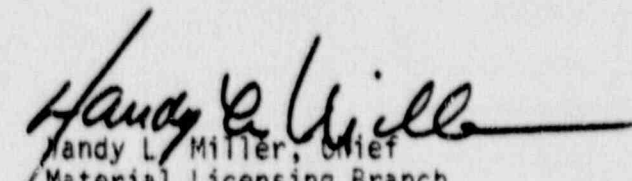
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Mr. William O. Miller

- 2 -

Jan 16 1985

1. Other services with sealed sources only, less than 1 curie total - \$290 (same as civil defense)
2. Self-shielded calibrators, no open beam - \$230 (same as irradiators)
3. Other calibrators - \$700 (same as R&D and well logging)
4. If licensee pays 3N, do not charge extra for 3P (leak test).
5. (No change to fees for other 3N.)

  
Randy L. Miller, Chief  
Material Licensing Branch  
Division of Fuel Cycle and  
Material Safety

Enclosure: As stated

U.S. NUC.  
LIC. FEE  
Mgmt. BRANCH

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## ENCLOSURE

## FY-84 LICENSING DATA

<u>PROGRAM CODE</u>	<u>TYPE OF ACTION</u>	<u>NO. OF CASES</u>
03220	NEW	3
	AMENDMENT	3
	RENEWAL	1
03221	NEW	0
	AMENDMENT	20
	RENEWAL	10
03222	NEW	0
	AMENDMENT	19
	RENEWAL	9
03223	NEW	6
	AMENDMENT	23
	RENEWAL	5
03224	NEW	0
	AMENDMENT	1
	RENEWAL	0
03225	NEW	5
	AMENDMENT	20
	RENEWAL	6

DISTRIBUTION:  
Exemption Fee File  
GJackson, LFMS  
LFMS R/F

MAR 5 1986

8912010137

89/11/29

MEMORANDUM FOR: Robert Fonner, Deputy Director, Regulatory Division  
Office of the Executive Legal Director

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

SUBJECT: REQUEST FOR EXEMPTION FROM FEES, MARINE BIOLOGICAL LABORATORY

Enclosed are copies of letters dated October 2, 1985, and December 24, 1985, from Andrew H. Mattox, the Radiation Safety Officer for Marine Biological Laboratory, requesting that Materials License 20-00595-02 and -06 be exempted from license fees pursuant to §170.11(a)(4) of 10 CFR 170.

Mr. Mattox states that the Marine Biological Laboratory is incorporated in Massachusetts as a non-profit educational and research institution and is recognized by the Internal Revenue Service as a non-profit educational organization. While the information submitted by Mr. Mattox outlining the use of radioactive material indicates that some of the research is conducted for educational purposes, it is not clear if the research activities that are not for teaching or training but "have great potential benefits to human health..." fit within the intended exemption in §170.11(a)(4).

We would appreciate your interpretation of §170.11(a)(4) as it pertains to this request for an exemption for research programs that are not for teaching or training but are considered by the Laboratory to meet the criteria for the exemption since they are for "medical purposes." As evidenced by our previous correspondence to other educational institutions, copies enclosed, our policy has been that 170.11(a)(4) applies only when the activities authorized, including medical research, are for teaching or training of students.

We have reviewed previous applications filed by the Marine Biological Laboratory for the subject licenses and find no earlier reference to teaching or training, or medical purposes, and all applicable fees have been paid in the past (see attached summary). If it is determined that the exemption is appropriate for these licenses, would it be necessary to refund the fees paid previously, other than the \$700 renewal fee currently in question?

Signed: C. James Holloway, Jr.  
C. James Holloway, Jr., Acting Director  
License Fee Management Staff  
Office of Administration

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Enclosures:  
As stated

OFFICE	LFMS:ADM	LFMS:ADM
SURNAME	GJackson:rej	C. Holloway
DATE	3/5/86	3/5/86



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

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MAR 31 1986

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

U.S.  
LIC. FEE MGMT STAFF

FROM: Ronald M. Smith  
Regulations Attorney  
Office of the Executive Legal Director

SUBJECT: REQUEST FOR EXEMPTION FROM FEES, MARINE  
BIOLOGICAL LABORATORY

Reference is made to your memorandum on the above subject, dated March 5, 1986. In that memo, you cited the case of Marine Biological Laboratory, hereinafter referred to as Marine Lab, which apparently does not fit into the usual category of "medical purposes" involving the education and training of students. Specifically, your memo states that "our policy has been that §170.11(a)(4) applies only when the activities authorized, including medical research, are for teaching or training of students" (emphasis added). In the November 10, 1982 letter to the University of Chicago provided by you, it was stated that "the medical exemption provision of Section 170.11(a)(4) applies only to licenses authorizing the use of radioisotopes in a medical teaching and training program where the material would be used for purposes other than for human use (e.g., in-vitro studies, animal studies, medical research not involving the treatment of humans)" (emphasis added). The August 9, 1982 letter to Amherst College goes on, in pertinent part, to express the view that the "exemption is not intended to cover other activities such as faculty research where students are not involved in the research."

Turning to the regulatory history, the original provision was proposed in 1967 as follows:

(4) A construction permit or license applied for, or issued to, a nonprofit educational institution, which shows itself to be, with respect to the material or facility licensed or to be licensed, party to (i) a loan agreement administered by the Commission's Division of Nuclear Education and Training, or (ii) a university reactor assistance contract with the Commission. The exemption in this subparagraph shall not apply to a construction permit or license for a facility or material other than that referred to in the loan agreement or university reactor assistance contract. 32 F.R. 3995, 3996, Mar 11, 1967.

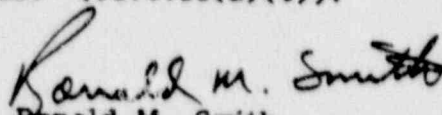
In the discussion for the final rule, it was merely stated that the rule was "revised to exempt from licensing fees licenses for materials or facilities other than power reactors issued to nonprofit educational institutions, used

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for training, teaching, or medical purposes...The present exemption, however, applies to a nonprofit educational institution which is licensed to operate a facility, other than a power reactor, for teaching, training, or medical purposes or to use materials for such purposes..." 33 F.R. 10923, August 1, 1968. By the placing of the comma after "training," the language normally would be interpreted that there are three possible criteria for the exemption, i.e., teaching, training, or medical purposes. Using this definition, the key seems to be whether the institution is nonprofit and whether it administers radioactive material to humans. It follows then that the earlier interpretations may have been too restrictive, given the language discussed above. As has been pointed out by Marine Lab, the language regarding medical purposes has no real meaning if read in such a restrictive fashion.

From the above, there would appear to be no legal objection to exempting education nonprofit institutions from fees when using licensed facilities and materials "for medical purposes." On the other hand, the NRC has established a practice of limiting the exemption to teaching and training, as well as student related medical research (see again the August 9 letter referenced above). The NRC could also use the exemption mechanism of §170.11(b)(1) under the theory that the medical research addressed by Marine Lab is "in the public interest." If the NRC were to determine that the research described by Marine Lab should be exempt from fees, either under the authority of (a)(4) or (b)(1), the NRC would not have to go back and refund fees previously collected, as Marine Lab itself only asked that it be exempted from future fees (see the October 2, 1985 letter from Marine Lab to the NRC). If there were doubt as to the utility of this approach, exempting the lab under (b)(1) would seem to eliminate this concern because an exemption under that provision would apply only prospectively.

Having said the above, Marine Lab makes a persuasive argument that "medical purposes" must have included medical research not involving the training or teaching of students. Accordingly, it is recommended that you give favorable consideration to Marine Lab's request because they are a nonprofit educational institution; and, in addition to medical research involving students, they are involved in other medical research, i.e., "medical purposes, except human use" (§170.11(a)(4)).



Ronald M. Smith  
Regulations Attorney  
Office of the Executive Legal Director

AD 23-1  
PDR

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JUN 05 1986

8912010144

89/1/29

MEMORANDUM FOR: Files

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

SUBJECT: CLARIFICATION OF SECTION 170.11(A)(5), 10 CFR 170

Section 170.11 (a)(5) of 10 CFR 170 states that no fees will be charged for "A construction permit or license applied for by, or issued to a Government agency....." In the context of this paragraph, certificates of compliance and other approvals are considered to be licenses and therefore are fee exempt if issued to Government agencies.

Signed, C. James Holloway, Jr.

C. James Holloway, Jr.  
Acting Director  
License Fee Management Staff  
Office of Administration

DISTRIBUTION:

LFMS  
Fee File  
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*Letz*  
*Dun*  
*Glander*  
*Low*  
*Holley*

~~8912010144~~ *Lp.*

OFFICE: LFMS:ADM 8  
SURNAME: GJackson:  
DATE: 6/2/86

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CJH  
6/2/86

*RF*  
RFonner  
6/1/86



SEP 4 1986

AD 234  
PDR

8912010125  
89/1/29

MEMORANDUM FOR: Robert L. Fonner  
Office of the General Counsel

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

SUBJECT: COLLEGE OF THE HOLY CROSS' REQUEST FOR AN EXEMPTION  
FROM FEES

Enclosed is a copy of a letter dated June 23, 1986, from the College of the Holy Cross requesting an exemption from fees for License No. 20-19748-01. Because the research performed under the authority of the license is not limited to the teaching and training of students, the license is not currently exempt from fees and the College has paid all of the fees required in the past. However, the College is requesting an exemption for grant-supported faculty research on the premise that the grants come primarily (emphasis added) through the National Science Foundation Program on Research in Undergraduate Institutions "designed to provide a stimulating environment for undergraduate science education."

As you know, we have in the past exempted educational institutions pursuant to 170.11(a)(4) only when the use of licensed material is limited to the teaching and training of students. It appears that the grant-supported faculty research mentioned is only indirectly related to the teaching and training of students and that other faculty research might not be related at all to student education. We would appreciate your opinion on this matter.

~~Sign. & James Holloway, Jr.~~

C. James Holloway, Jr.  
Acting Director  
License Fee Management Staff  
Office of Administration

Enclosure:  
6/23/86 ltr

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Subject File  
LFMS R/F  
DW/GJ/Fonner

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OFFICE	: LFMS:ADM	: LFMS:ADM	:	:	:	:
SURNAME	: GJackson:jp	: C. J. Holloway	:	:	:	:
DATE	: 8/2/86	: 8/2/86	:	:	:	:

AD 23-1

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SEP 9 1986

89/20/0106 89/1/29

MEMORANDUM FOR: Robert L. Fonner  
Office of the General Counsel

FROM: C. James Holloway, Jr., Director  
License Fee Management Staff, ADM

SUBJECT: MARINE BIOLOGICAL LABORATORY'S REQUEST FOR AN  
EXEMPTION FROM FEES

Enclosed is a copy of our March 5, 1986 memorandum requesting an interpretation of 170.11(a)(4) as it relates to Marine Biological Laboratory's October 2, 1985 request for an exemption from fees for Materials License 20-00595-02 and -06. Also enclosed are copies of the attachments to our memorandum and a copy of Ron Smith's reply. In a subsequent meeting regarding this case, you requested that we provide copies of additional correspondence with similar licensees which document our policy in applying the exemption.

Although an extensive search of other license files did not reveal a situation that exactly parallels the Marine Biological Laboratory case, several similar cases were found. (Note that it is not clear from the license documents whether the research authorized is for "medical purposes". If radioactive material is not used in or on humans, the fact of whether it is for "medical purposes" is of no importance to the licensing staff. For their purposes, research is research and no further distinction is made.) Enclosed are copies of documents from these additional cases pertaining to our criteria for exempting educational institutions under 170.11(a)(4). In some cases, letters were sent stating our interpretation of the exemption; in other cases, licenses were classified as subject to fees under Part 170 based on information in the application and/or the license which indicated that the use of licensed material was not limited to teaching and training of students.

In their December 24, 1985 letter, Marine Biological Laboratory states their belief that the exemption in 170.11(a)(4) for medical purposes must refer to medical research. They further contend that the phrase "medical purposes" has no intent if the exemption was not intended to apply to radioisotope use that does not involve the teaching and training of students. We recognize that the phraseology of the exemption may leave doubt as to the intent of the term "medical purposes". However, as evidenced by the enclosed documents, we believe that a policy has been firmly established that the exemption for "medical purposes" applies only when the medical research involves the teaching and training of students.

~~89/20/0106~~ 2/90

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In his March 31, 1986 memorandum, Ron suggests that we could grant Marine Biological Laboratory an exemption under 170.11(b)(1) based on the fact that their medical research "is in the public interest". It appears that the research conducted by the University of Health Sciences/The Chicago Medical School, the University of New England College of Osteopathic Medicine, and Case Western Reserve University (see License Nos. 12-02193-03, 18-20522-01, and 34-00738-04, copies enclosed) could also be construed to be in the public interest. However, this criteria has not been used to grant exemptions to these institutions, and, because their research is not limited to the teaching and training of students, these licenses are subject to fees under 10 CFR 170. In addition, licenses issued to organizations such as the American Red Cross, The Michigan Cancer Foundation, and the Harlan E. Moore Heart Research Foundation are subject to fees under Part 170.

We are enclosing the additional documents which you requested. If you require any additional information, please let us know.

Sincerely,

*[Handwritten signature]*

C. James Holloway, Jr., Director  
License Fee Management Staff  
Office of Administration

Enclosures:  
As stated

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

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SEP 20 1986

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

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

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

*College of the Holy Cross  
 - NRC 12*

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

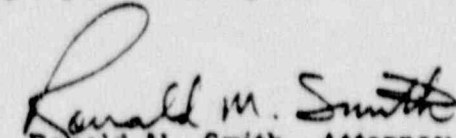
research, rather than toward a profit making result;  
and,

(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.

  
Ronald M. Smith, Attorney  
Office of the General Counsel