



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 9, 1993

Belair Quartz, Inc.
ATTN: Margot L. Nichols
Office Manager
P.O. Box 949 - Christiansted
St. Croix, U.S. Virgin Islands 00821-0949

Gentlemen:

I am responding to your letter of September 21, 1993, to Chairman Selin, in which you seek relief from the renewal and annual fees for your licensed facility. The Commission is considering your September 21, 1993, letter as an exemption request.

The bases for your request are: 1) only about three percent of your total production involves watches equipped with H3-luminous dials and hands; 2) if it were possible to segregate this portion of your operation into a separate corporate entity, it would fall into the "small business" fee category; 3) the level of hazard is low and 4) the NRC's review effort is minimal and disproportionate to the amount of fees you are assessed.

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90) requires that the Commission recover 100 percent of its budget authority, less appropriations from the Department of Energy (DOE) administered Nuclear Waste Fund, for Fiscal Years 1991 through 1995 by assessing license and annual fees. The Commission was required to collect approximately \$445 million for FY 1991; approximately \$493 million for FY 1992; and approximately \$519 million for FY 1993. These budgeted amounts represent those resources necessary for NRC to perform its safety mission.

To recover the budget, the NRC assesses licensing and inspection fees under 10 CFR Part 170 and annual fees under 10 CFR Part 171. Fees assessed under 10 CFR Part 170 include license application fees, amendment fees, renewal fees, and inspection fees. Annual fees are to recover NRC's generic and other regulatory costs that are not recovered as identifiable services to specific licensees and applicants under 10 CFR Part 170. The annual fees allocate the generic and other regulatory costs that are attributable to a given class of licensee to that class. On April 23, 1993, the NRC published for comment a proposed rule that establishes both types of fees for FY 1993. The final rule for FY 1993, which was published on July 20, 1993, became effective August 19, 1993.

The revised fee regulations continue previous provisions that reduce the impact of fees on small entities. For licensees with gross receipts between \$250,000 and \$3,500,000, a maximum annual fee of \$1,800 has been established. A lower-tier small entity fee of \$400 has been established for small businesses and non-profit organizations with gross annual receipts of less than \$250,000 and for small governmental jurisdictions with populations of less than 20,000. The Commission recognizes that this process does not

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eliminate all economic impacts, but strikes a balance between the requirements of the Public Law to collect 100 percent of the budget by recovering costs and the Regulatory Flexibility Act to consider the impact on small entities. The NRC adopted size standards for determining which NRC licensees qualify as small entities on December 9, 1985 (50 FR 50241), and clarified these size standards on November 6, 1991 (56 FR 56672). In establishing these size standards, the term "annual receipts" is used in the same manner as defined and used by the Small Business Administration (SBA). The SBA defines receipts "...to include all revenue in whatever form received or accrued from whatever source." Therefore, the term "gross annual receipts" refers to a licensee's entire business, not just receipts of a subsidiary or receipts from licensed radioisotope activities only. Thus, if your company's annual gross receipts total \$3.5 million or more, then you do not qualify as a small entity.

The final FY 1993 10 CFR Part 170 fees for specific services to identifiable applicants and licensees are higher than last year's fees. The increases for FY 1993 result primarily from the requirement of the Chief Financial Officers Act to conduct a biennial review of fees and other charges to ensure that the fees and charges reflect the cost of the services. The NRC biennial review indicated that the NRC needed to modify the average number of hours on which the current application, amendment, renewal and inspection flat fees are based in order to recover the costs of providing the licensing and inspection services. In addition, the annual fees were also increased because: 1) NRC's new budget authority has increased resulting in a corresponding increase in the professional hourly rate and, in some cases, the amount of funds budgeted for a particular class of licensee; and 2) the number of licenses in some classes has decreased as compared to FY 1992 due to license termination or consolidation resulting in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR Part 170.

Your request for an exemption from the annual fees does not satisfy the requirements of 10 CFR 171.11(d). Furthermore, I find no unique circumstances to grant Belair Quartz, Inc. relief from payment of the renewal and annual fees associated with your licensed operations. Therefore, your request is denied. The Commission acknowledges receipt of payment of \$11,220 for your FY 1993 annual fee Invoice No. AM00750-93 for License No. 55-23732-01E.

The NRC understands your concern and is sensitive to the increase in the fees during the past three years. Every effort is made by the NRC to ensure that the budget that must be recovered in accordance with the requirements of OBRA-90 is the minimum needed to provide adequate protection of the public health and safety, the NRC mission. We realize, of course, that fees do have a financial impact on NRC licensees, particularly on smaller programs. Accordingly, in developing the Commission's fee schedules, every effort is

Belair Quartz, Inc.

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made to establish fees that are fair and equitable. We believe the fees established are in accord with guidance provided by the Congress.

Sincerely,

Original signed by
James M. Taylor

James M. Taylor
Executive Director
for Operations

DISTRIBUTION:

10 CFR 171 Exemption File FY 1993 (w/orig inc.)

License File 55-23732-01E 03030778

Materials Annual Fee Correspondence File

Invoice File AM00750-93

NUDOCS (ML61)

PDR

GJackson

DDandois

EBlack

DWeiss

LNaval

LTremper

JHolloway

GFehst

EDO-9367

EDO R/F

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DAF R/F

LFDCB R/F (2)

*See previous concurrence

OFFICE:	LFDCB	LFDCB	LFDCB	LFDCB	DAF	DAF
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