



AEROTEST OPERATIONS, INC.

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August 22, 2018

ATTENTION: Document Control Desk
NRC's Chief Financial Officer
U.S. Nuclear Regulatory Commission
White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

AEROTEST RADIOGRAPHY AND RESEARCH REACTOR
DOCKET NO. 50-228/LICENSE NO. R-98.

Request for the Small Entity Fee Adjustment

Ladies and Gentlemen:

This letter and enclosures respond to the previous NRC letter dated July 16, 2018.

I declare under penalty of perjury that the statements made in the enclosures are correct and truthful to the best of my knowledge.

Should you have any questions or require additional information regarding this submission, please contact AO President David M. Slaughter, Ph.D. at (801) 631 5919 or dmsraven@gmail.com

Sincerely yours,

David M. Slaughter, Ph.D
President and Reactor Administrator
Aerotest Operations, Inc.

Enclosures:

1. Request for a Small Entity Fee Adjustment
2. Attachment A Regulatory Background Concerning Small Business Adjustment
3. Attachment B Description of Aerotest Operations' Activities (Confidential under 10 CFR 2.390(a)(4))
4. Affidavit

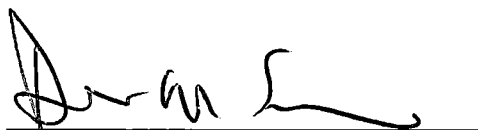
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AFFIDAVIT

I, David M. Slaughter, hereby affirm and state as follows:

1. I am the President of Aerotest Operations authorized to execute this affidavit on behalf of Aerotest Operations Inc.
2. The information contained with the attached letter, dated August 22, 2018 entitled "**Attachment B: Description of Aerotest Operations' Activities**" contains proprietary commercial information. The proprietary information includes sensitive business information related by or for Aerotest Operations, Inc. This information should be held in confidence by the NRC and withheld from public disclosure.
- 3 In making this application for withholding of proprietary information of which it is the owner, Nuclear Labyrinth believes that the information qualifies for withholding under the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552(b)(4), the Trade Secrets Act, 18 U.S.C. Section 1905, and NRC regulations 10 CFR 9.17(a)(4) and 2.390(a)(4) for trade secrets and commercial information because:
 - i. This information is and has been held in confidence by Aerotest Operations
 - ii. This information is of a type that is customarily held in confidence by Aerotest Operations, and there is a rational basis for doing so because the information includes sensitive business information pertaining to clients.
 - iii. The information is being transmitted to the NRC voluntarily and in confidence.
 - iv. This information is not available in public sources and could not be gathered readily from other publicly available information.
 - v. Public disclosure of this information would create substantial harm to the competitive position of Aerotest Operations by disclosing certain business decisions Aerotest Operations has made or is considering and the analysis that went behind those decisions. Development and evaluation of this commercial information was achieved at, and disclosure could lead to additional, significant cost to Aerotest Operations.

I declare under penalty of perjury that the statements made are correct and truthful



David M. Slaughter

Request for the Small Entity Fee Adjustment

10 CFR 170/171 Small Entity Fee Adjustment

When the ARRR facility (license R-98) was transferred on July 17, 2017, to Nuclear Labyrinth, LLC, a small entity was created, and with it a need to address small entities when establishing fees for 10 CFR 50 facilities. In the past, no utilization facility that was not already exempt from annual fees ever qualified as a small entity per 10 CFR 2.810. As such, there had never been a need to account for small entities when establishing fee schedules in 10 CFR 170 and 10 CFR 171 for facilities licensed under 10 CFR 50. Only certain entities licensed under 10 CFR parts 30, 40, 70, 71, and 76 are currently provided fee relief per the U.S. Nuclear Regulatory Commission Small Entity Compliance Guide.

NRC Regulation §2.800 said that §2.810 (NRC Size Standards) applied to all rulemaking. § 170 and 171.15 are NRC Rules and therefore subject to §2.810. ARRR facility (license R-98) meets the small business size as outlined in §2.810. (see Attachment A)

As there now exists research reactor that fits into the small entity category of this guide, it is appropriate and necessary to adjust the rules regarding utilization facility fees to ensure consistent and fair practices.

In considering a remedy for 10 CFR 171.15, one possible solution would be simply apply the two-tiered fee structure used for other licenses described in the US Regulatory Commission Small Entity Compliance Guide. Currently, that would place ARRR in the lower tier, with ARRR being responsible for annual fee of \$850.00 with the possibility of paying the higher annual fee of \$4,100 upon achieving the parameters defining the higher tier.

Small Entity Compliance covering activities detailed in 10 CFR 170 would use a 90% relief adjustment of the project hours charged to the ARRR licensee. Examining Part 170 invoice for ARRR (invoice period 4/01/2018-06/23/2018), the total invoice amount of 81,473.46 would be adjusted to \$8,147.35. This would yield financial obligations by the licensee that would more reasonable with its size.

Temporary relief from 10 CFR 170/171 Fees

As stated earlier, the ARRR facility (license R-98) was transferred on July 17, 2017, to Nuclear Labyrinth, LLC, (a small entity); Aerotest has maintained good status with regards to NRC fee payments, including the last annual payment of approximately 81,000 in September 2017 after Aerotest changed ownership. (The NRC form 526 was also submitted along with the requested payment). A significant number of regulatory documents and programs are required updating and modernizing. Many of the existing documents are composed in the earlier years with few modifications. The process of updating these programs and documents to current NRC regulations and ANSI standards would result in undue hardship from NRC costs, as currently calculated. We request that the NRC temporarily exempt ARRR from 170 and 171 fees according to 10 CFR 50.12. The Commission may "grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Simply, NRC has the authority to make rules and exceptions regarding fees. The exemption would provide, only temporary relief, of 10 CFR 170/171 fees while the licensee performs good faith efforts to update its regulatory program. (The temporary exemption would only be needed until such time the proposed 10 CFR 170/171 small-entity remedies are enacted.)

Public Interest for Small Entity Inclusion in All Rule-Making

There are a number of compelling circumstances that support the public interest for granting our requests. Clearly, there is a need to ensure the availability and maintenance of essential nuclear capabilities and assets. Assets such as nuclear research and test reactors are extremely difficult and expensive to replace or even site new. Specifically, Aerotest Operations is the leading institution in teaching, developing, and performing the techniques for material interrogation, neutron radiography and detection. Aerotest confirms and validates material specification, identifies counterfeit parts, and defines material/part survivability and vulnerability. The diversity of Aerotest activities are demonstrated in Attachment B.

It is true when unique assets and techniques are lost, engineering specifications are downgraded and the need diagnostic tests are reduced or completely eliminated until a catastrophic event showcasing a preventable failure. This is clearly evident in the transportation (i.e., aerospace, automobile) and military industries. The national loss of capabilities can be shown in domestic production of research grade and pharmaceutical radioisotopes, various Pu radiosopes, Mo-99, etc.,). The reliance of foreign manufacturing of TRIGA fuel provide yet another glaring failure in preservation of national capabilities.

Limited availability and access to other existing nuclear reactors reinforce the public need:

Utility power reactors belong to natural monopolies cost recovery is provided by the rate payer no access for other purposes,

US federal reactors access is limited to government related missions and some outside-funded users. Unfortunately, the facility design, security and safety protocols, and costs prohibit rapid time-sensitive forensic work,

University research- grade reactors struggle with mission relevancy and suitability for performing forensic techniques. University reactors are supported by state and federal taxpayers (heavily subsidized by federal agencies i.e., DOE, NRC, etc.,), and nongovernmental funded users. Their use is restricted by the nature of funding it accepts.

Attachment A: Regulatory Background Concerning Small Business Adjustment

Per 56 FR 57587 11/13/1991

On Dec 9, 1985 (50 FR 50241) the NRC adopted size standards it would use to determine whether an NRC licensee would be considered a small entity for the purpose of implementing requirements of the Regulatory Flexibility Act. The July 10, 1991, final rule repeated the size standards presented in the December 9, 1985, notice to inform affected licensees of the criteria to be used for determining whether or not they would be eligible for a reduced fee.

Small business info added to § 171.16 : On November 6, 1991 (56 FR 56671), the NRC published a general notice that restated its size standards to clearly identify the different classes of licensees affected and the standard that is applied to each class of licensee. Specifically, the general notice added the Regulatory Flexibility Act's definition of small governmental jurisdiction adopted by the NRC but not included in either the 1985 notice announcing the adoption of the size standards or in § 171.16 where the size standards were restated for the benefit of those licensees who are required to pay annual license fees.

Per 56 FR 56671 11/06/1991

December 9, 1985 (50 FR 50241), the NRC adopted size standards it would use to determine whether an NRC licensee would be considered a small entity for the purpose of implementing requirements of the Regulatory Flexibility Act. On July 10, 1991 (56 FR 31472), the NRC published a final rule amending 10 CFR parts 170 and 171 as required by Public Law 101-508

In order to reduce the impact of the increase in fees imposed on small entities, the NRC imposed a maximum annual fee of \$1800 for each category for those licensees who qualify as small entities under its size standards.

In the notice announcing the adoption of NRC's size standards (50 FR 50241; December 9, 1985), the NRC indicated that the Small Business Administration (SBA) had formally adopted \$3.5 million or less as the standard for qualifying as a small business. The NRC stated that it was adopting this standard, rather than the NRC proposed standard.

Per 50 FR 20913 5/21/1985

Under the Atomic Energy Act, as amended, the NRC is responsible for the licensing and regulation of source, byproduct and special nuclear material in a manner which will protect the public health and safety, national security, and the environment. To this end, the NRC regulates approximately 7,000 licensees who hold over 9,000 licenses. Nuclear reactor licensees, while the focus of wide public interest, represent only a small percentage of the NRC's licensees.

NRC Licensee Groupings NRC licensees are grouped into categories in accordance with their use of nuclear material. In 1983, the NRC contacted its materials licensees and asked them to complete a questionnaire which requested information such as the number of employees, range of annual receipts, and number of beds (for hospitals). The response rate from the survey, which was conducted during the same period of time that the SBA was preparing its notice of final rulemaking, was in excess of 80 percent.

U.S. NRC Regulations (10 CFR)

10 CFR 2.800

§ 2.800 Scope and applicability.

(b) The procedures in §§ 2.804 through 2.810 apply to all rulemakings.

10 CFR 2.810

2.810 NRC size standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a —

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$7.0 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$7.0 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is —

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.104). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

(f) Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the NRC to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them. To help small entities obtain information quickly, the NRC has established a toll-free telephone number at 1-800-368-5642.

[60 FR 18346, Apr. 11, 1995, as amended at 62 FR 26220, May 13, 1997; 72 FR 44953, Aug. 10, 2007; 73 FR 42673, July 23, 2008; 77 FR 39387, Jul. 3, 2012; 79 FR 66601, Nov. 10, 2014]

In conclusion

NRC Regulation §2.800 said that §2.810 (NRC Size Standards) applied to all rulemaking. §170 /171.15 are NRC Rules and therefore subject to §2.810. ARRR facility (license R-98) meets the small business size as outlined in §2.810 , so the NRC should refund the difference in the amount between what we paid in 2017 and 2018 and the small business amount.

Here are links to the FR You'll need to find the page within the publication.

<https://cdn.loc.gov/service/ll/fedreg/fr050/fr050098/fr050098.pdf> 50 FR 20913 5/21/1985

<https://cdn.loc.gov/service/ll/fedreg/fr056/fr056215/fr056215.pdf> 56 FR 56671 11/6/1991

<https://cdn.loc.gov/service/ll/fedreg/fr056/fr056219/fr056219.pdf> 56 FR 57587 11/13/1991

Here are the Links to U.S. NRC Regulations (10 CFR

<https://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0800.html> 10 CFR 2.800

<https://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0810.html> 10 CFR 2.810