



U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation NRR Temporary Staff Guidance

Temporary Staff Guidance No.: **TSG-DORL-2020-01**

Temporary Staff Guidance Title: **COVID-19 RELATED EXEMPTIONS FROM NRC
PART 26 REGULATIONS**

Effective Date: **April 6, 2020**

Approved By: **Craig G. Erlanger**

Date Approved: **April 6, 2020**

Primary Contact: **Scott P. Wall** **Ed Miller**
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Scott.Wall@nrc.gov **Ed.Miller@nrc.gov**

Responsible Organization: **NRR/DORL**

ADAMS Accession No.: **ML20091L276**



U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation

NRR Interim Staff Guidance

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**by e-mail*

OFFICE	NRR/DORL/LPL3/PM *	NRR/DORL/LPL1/BC *	OGC *	NRR/DORL/D
NAME	SWall	JDanna	TCampbell	CErlanger
DATE	03/31/2020	03/31/2020	03/31/2020	04/06/2020

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Temporary Staff Guidance - COVID-19 Related Exemptions from NRC Part 26 Regulations

1. **POLICY**

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs," prescribes requirements and standards for the establishment, implementation, and maintenance of fitness-for-duty programs. Under 10 CFR 26.9, licensees may request exemptions from the requirements of Nuclear Regulatory Commission (NRC) regulations in 10 CFR Part 26. If the NRC grants the exemption, then the licensee is relieved from compliance with the specified regulations, subject to any requirements included in the NRC's approval of the exemption.

2. **BACKGROUND**

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the NRC, and its regulated entities.

By letter dated March 28, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20087P237), the NRC provided guidance to the industry for the regulatory basis, including the specific constraints, for granting these exemptions.

Under the NRC's regulations in 10 CFR 26.9, "Specific exemptions," "Upon application of any interested person or on its own initiative, the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest." Consistent with this regulation and subject to the terms and conditions outlined in this letter and its attachment, the NRC is prepared to grant, upon request from individual licensees, exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)-(d)(7). If the licensee determines that it cannot meet these terms and conditions or that it needs a different Part 26 exemption, then the licensee must seek separate NRC approval through the normal exemption process.

3. **OBJECTIVE**

This temporary staff guidance document provides Office of Nuclear Reactor Regulation (NRR) staff members the basic framework for processing these 10 CFR Part 26 exemptions.

These procedures are intended to enhance NRR's efficiency in responding to the needs of licensees and the public. Specific objectives include the following:

- Ensure public health and safety are maintained;
- Promote consistency in the processing of exemptions by providing the NRR staff with an improved framework for the process;
- Improve internal and external communications;
- Increase technical consistency; and
- Improve public confidence in NRC's decisions regarding these exemptions.

The NRC will apply this exemption review process to only those exemption requests that meet the criteria in the March 28, 2020, letter. Exemption requests that do not comply with the criteria outlined in the March 28, 2020, letter will not be reviewed or approved under this process.

The March 28, 2020, letter lists the minimum set of requirements that apply when a licensee's program is operating under this exemption. A licensee may commit to more stringent requirements and a project manager (PM) may use this guidance to approve the request. However, a PM may not use this guidance to approve a request that does not meet the minimum requirements. Similarly, a PM may not impose additional requirements that go beyond the scope of the letter or the licensee's request. Doing so could be a forward fit.

Licensee requests that deviate from the criteria listed the letter will be considered on a case-by-case basis.

Exemption requests submitted in accordance with the March 28, 2020, letter will be based on site-specific conditions related to COVID-19 impacts and will be reviewed on a case-by-case basis. Licensees should not submit, and PMs will not accept, fleet-based requests.

The requirements of 10 CFR 26.33, "Behavioral observation"; 10 CFR 26.209, "Self-declarations"; and 26.211, "Fatigue assessments" will remain in effect during the period of the exemption. These requirements provide reasonable assurance that should personnel become impaired due to fatigue, requirements and processes are in place to identify the impairment through observation by plant staff or by worker self-declaration, and to assess and address instances of impairment through fatigue assessments.

4. PROCESS OVERVIEW

The objective of the exemptions from 10 CFR 26.205(d)(1)-(7) is to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID-19 PHE on maintaining the safe operation of these facilities. Specifically, if (1) a licensee's staffing levels are affected by the COVID-19 PHE, (2) a licensee determines that it can no longer meet the work hour controls of 10 CFR 26.205(d)(1)-(d)(7), and

(3) the licensee can effect site-specific administrative controls for COVID-19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a), then the licensee should—as soon as practicable and no less than 24 hours before it would be out of compliance with the regulations—notify the NRC in writing that it can no longer meet the requirements of 10 CFR 26.205(d)(1)-(d)(7).

It is expected that the licensee will need a quick response to the requested exemption. As such, the project manager (PM) and licensee should be in regular contact to coordinate logistics prior to submittal. Additionally, in order to expedite NRC's response, it is expected that the PM will be the primary reviewer. The technical review branches have concurred on the model approval letter and therefore will not need to review each individual licensee submittal or concur on each approval.

4.1 Work Planning

When a PM receives the written exemption request from a licensee, the PM will immediately initiate a new project in the Reactor Program System (RPS).

Notes:

A licensee should submit the exemption request in PDF format using either of two methods:

- (1) through the Electronic Information Exchange (EIE), along with an email to the plant's Licensing PM. When submitting through EIE, include "EXPEDITE" in the Comment field.**
- (2) as an attachment to an email addressed to the Document Processing Center (DocProcessing.Center@nrc.gov) and the plant's Licensing PM. The Subject line of the email should include "URGENT – COVID-19 Part 26 Exemption Request"**

Whichever method is used, as always, the licensee should ensure that the PDF is in compliance with PDF settings required by the E-rule guidance document (ADAMS Accession No. ML032580290) so that it can be promptly added to ADAMS. Documents that do not meet the E-rule guidance document criteria cannot be promptly processed into ADAMS. The Document Control Center will address non-conforming documents with the Licensing PM, who will work with the licensee to resolve the issue and obtain a submittal that can be processed into ADAMS.

The timeliness goals Office Instruction LIC-109 are waived and should be considered as "Not Applicable."

Enterprise project identifiers (EPIDs) provide a means of billing the licensee and tracking the work. When requesting an EPID, the PM should have the EPID:

- (1) Coded as fee billable and Activity Type "LLE";

- (2) Titled as “[Plant Name] – [COVID-19] Fitness for Duty Exemption [Response to March 28, 2020 Letter to Industry]”;
- (3) PM estimated hours: 10 hours; and
- (4) Project duration: No more than 3 days. In some circumstances, the request may need to be reviewed and approved or denied within 24 hours. PMs should establish the timeline as needed to meet licensee needs.

4.2 Review Request for Completeness

After entering the exemption request into RPS, the PM will immediately review the exemption application for completeness. Based on the March 28, 2020, letter to industry, the PM will confirm that the exemption application includes:

- a statement that the licensee can no longer meet the work hour controls of 10 CFR 26.205(d) for certain positions;
- a list of positions for which the licensee will maintain current work hour controls under 10 CFR 26.205(d)(1)-(d)(7);
- a list and description of alternative controls for the management of fatigue to address site-specific issues as a result of the COVID-19 PHE;
- the date and time when the licensee will begin implementing its site-specific COVID-19 PHE fatigue-management controls for personnel specified in 10 CFR 26.4(a);
- a statement that the licensee’s site-specific COVID-19 PHE fatigue-management controls are consistent with the constraints listed below;
- a statement that the licensee’s alternative controls for the management of fatigue, at a minimum, ensure that for individuals subject to these alternative controls:
 - (1) not more than 16 work hours in any 24-hour period and not more than 86 work hours in any 7-day period, excluding shift turnover;
 - (2) a minimum 10-hour break is provided between successive work periods;
 - (3) 12-hour shifts are limited to not more than 14 consecutive days;
 - (4) a minimum of 6 days off are provided in any 30-day period; and
 - (5) requirements are established for behavioral observation and self-declaration during the period of the exemption.

Consistent with Appendix B, Section 1.1, of LIC-109, "Acceptance Review Procedures," an acceptance review in accordance with LIC-109 is not required because of the limited time available to make a regulatory decision.

Appendix A serves as a checklist to help the PM ensure completeness of the application. An incomplete application cannot be processed using this expedited process.

4.4 Work Schedule

Licensees should make every effort to submit timely exemption requests. The NRC staff will complete its review of the application and issue its written determination within 3 days of receiving the licensee's written request, unless the licensee indicates in its request that it needs the NRC's determination sooner.

If sufficient time is not available for the NRC to provide a prior written determination (approval or denial) for the exemption, then the NRC may provide verbal denial or approval, followed promptly by a written letter documenting the determination.

The NRC will consider these requests on a case-by-case basis and, if the requirements for an exemption are met, will provide written approval of an exemption for a period of 60 days.

If the COVID-19 PHE condition does not improve before expiration of the exemption, then the NRC may consider an additional exemption period. If a further exemption is needed, individual licensees should request an extension of the exemption from the NRC before the end of the 60-day period. Licensees must come back into compliance with the regulations or receive approval for an additional exemption period from the NRC before the end of each exemption period. Such additional exemptions will be considered, taking into account the hours worked under the initial exemption. As with the initial approval, subsequent approvals would be reviewed and potential authorization would be issued in writing or verbally, depending on the timing of the licensee's request.

4.5 Determine Whether 10 CFR 50.12(a) Requirements Are Met

The requirements of Section 50.12(a) are not applicable for these exemptions.

4.6 Technical Review of the Proposed Exemption

The PM will verify that the licensee has provided the information in the March 28, 2020, letter using the checklist in Appendix A. If the PM determines that the licensee provided all required information, the PM will draft the approval letter to the licensee following the model approval letter provided in Appendix B. The model approval letter template is available in ADAMS Accession No. ML20091L285. The technical branches have already concurred on the model approval letter. Therefore, if the PM determines that the licensee followed the March 28, 2020, letter, using the checklist in Appendix A, the technical branches do not need to re-concur on the approval letter before it is issued.

4.7 Preparation of Work Products

4.7.1 Approval Letter

Attachment B provides the format of the Part 26 approval letter. It is recommended that all PMs draft approval letters for their plants in advance and provide them for licensing assistant (LA) review such that once the licensee submits the exemption request, the package is immediately ready for review by the Office of the General Counsel (OGC).

4.7.2 Environmental Review

The NRC has determined that exemptions requested in response to the March 28, 2020, letter are categorically excluded from environmental review under 10 CFR 51.22(c)(25).

As described in the model approval letter, the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with this exemption request.

4.8 Review and Concurrence

The PM will draft the approval letter following the model approval letter in Appendix B and provide it to the LA for review and concurrence. The technical review branches have concurred on the model approval letter and do not need to re-concur on the letter for each plant. The PM will obtain a “no legal objection” review from OGC on each approval letter. The PM’s branch chief will concur on the approval letter. Finally, the Division of Operating Reactor Licensing (DORL) Division Director will concur and sign the approval letter. Consistent with ADM-200, “Delegation of Signature Authority,” if the DORL Division Director is unavailable, this responsibility can be delegated to the one of the DORL Deputy Division Directors.

Note: When routing for OGC NLO review, DO NOT route using the OGC mailroom. Route the package directly to:

- Tison Campbell
- David Roth

4.9 Issuance of Exemption

After the required concurrences and signatures are obtained, the PM will coordinate with the DORL Administrative Assistants to ensure the exemption approval letter is issued as expeditiously as practical following normal DORL dispatch processes. The staff should pay particular attention to information related to security staffing levels or other sensitive or security-related information. It is the responsibility of the PM to ensure that sensitive information is

appropriately marked and handled and is issued to the licensee by approved methods.

4.10 Verbal Approval

Should the licensee need a decision on the exemption before a formal letter can be issued, the PM should follow the guidance in Appendix C for verbal approval or denial. Appendix C provides a model script for the verbal approval, which consists mainly of reading the model approval letter. The DORL Division Director must provide the verbal approval. OGC must be consulted prior to providing verbal approval. Consistent with ADM-200, "Delegation of Signature Authority," if the DORL Division Director is unavailable, this responsibility can be delegated to the one of the DORL Deputy Division Directors.

The staff should issue the final written authorization within 3 days of receiving the request from the licensee, notwithstanding the verbal authorization. The final authorization letter should reference the verbal authorization phone call. The PM does not need to document the verbal authorization in a separate "memo to file" or other stand-alone document.

4.11 Denial of Application for Exemption

If the NRC staff concludes that the licensee's requested exemption cannot be granted (at any time during the exemption request review process), the PM and licensee may mutually agree to the withdrawal of the application. However, if the licensee does not elect to withdraw the application, the PM shall prepare a letter notifying the licensee that the NRC is denying the exemption request. The letter must include the basis for the NRC staff's denial. As such, the level of detail for the staff's basis for denial is expected to meet the same standards as the staff's evaluation in granting the exemption.

4.12 Federal Register Notices

Under the routine NRR process for issuing exemptions (LIC-103), the staff voluntarily publishes a notice in the *Federal Register* when an exemption is granted. However, for exemptions submitted in response to the March 28, 2020, letter to industry and approved under this guidance, the staff will not publish a *Federal Register* notice for each exemption issued. At a later date, the staff will publish a *Federal Register* notice providing a compiled listing of exemptions granted in response to the March 28, 2020, letter.

Enclosures:

1. Appendix A: Checklist: COVID-19 Related
10 CFR 26.205(d) Exemption Request Content
Guide
2. Appendix B: Template for Exemption
Approval Letter
3. Appendix C: Template for Verbal Approval
of Exemption

Appendix A

Exemption Request Content Checklist

Appendix A
COVID-19 Related 10 CFR 26.205(d) Exemption Request Content Checklist

Letters from licensees requesting exemption from requirements in Section 205(d) of Title 10 of the *Code of Federal Regulations* (CFR) Part 26 to address issues related to Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) can be emailed to the NRR licensing project manager with a separate copy provided to the Document Control Desk. A licensee's exemption request from work-hour controls of 10 CFR 26.205(d) should contain the following:

1. A statement that the licensee can no longer meet the work-hour controls of 10 CFR 26.205(d) for certain personnel or groups of personnel specified in 10 CFR 26.4(a) because of site-specific issues as a result of the COVID-19 PHE.
2. A list of personnel or groups of personnel specified in 10 CFR 26.4(a) for which the licensee will maintain current work hour controls under 10 CFR 26.205(d)(1) - (d)(7).
3. A list of alternative controls for the management of fatigue to address site-specific issues as a result of the COVID-19 PHE.
4. The date and time when the licensee will begin implementing its alternative controls for the management of fatigue for personnel (or group of personnel) specified in 10 CFR 26.4(a).
5. A statement that the licensee's site-specific alternative controls for the management of fatigue are consistent with the minimum alternative controls listed below.
6. The alternative controls should ensure the following, as a minimum:
 - a. not more than 16 work hours in any 24-hour period and not more than 86 work hours in any 7-day period, excluding shift turnover;
 - b. a minimum 10-hour break is provided between successive work periods;
 - c. 12-hour shifts are limited to not more than 14 consecutive days;
 - d. a minimum of 6 days off are provided in any 30-day period; and
 - e. changes in actions to meet requirements for behavioral observation for both acute and cumulative fatigue and self-declaration during the period of the exemption as appropriate due to potential for increased worker fatigue.

Appendix B

Template for Exemption Approval Letter

[Available in ADAMS ML20091L285]



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

[MONTH DAY], 2020

[LICENSEE CONTACT INFO]

SUBJECT: [PLANT NAME, UNIT(S) – EXEMPTION FROM SELECT REQUIREMENTS OF
10 CFR PART 26 (EPID L-2020-LLE-XXXX [COVID-19])

Dear [LICENSEE CONTACT]:

The U.S. Nuclear Regulatory Commission (NRC) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs," Section 26.205, "Work hours." This action is in response to your application dated [MONTH DAY, 2020] (Agencywide Documents Access and Management System (ADAMS) Accession No. ML_____), which cited the March 28, 2020 (ADAMS Accession No. ML20087P237), letter from Mr. Ho Nieh describing a process to request expedited review of certain exemptions from 10 CFR Part 26 during the COVID-19 Public Health Emergency (PHE).

In your letter, you provided the following information:

- A statement that you can no longer meet the work-hour controls of 10 CFR 26.205(d) for certain positions;
- A list of positions for which you will maintain current work-hour controls under 10 CFR 26.205(d)(1)-(d)(7);
- The date and time when you will begin implementing site-specific COVID-19 PHE fatigue-management controls for personnel specified in 10 CFR 26.4(a);
- A statement that your site-specific COVID-19 fatigue-management controls are consistent with the constraints outlined in the March 28, 2020, letter; and
- A statement that you have established alternative controls for the management of fatigue during the period of the requested exemption and, at a minimum, the controls ensure that, for individuals subject to these alternative controls:
 - Individuals will not work more than 16 work hours in any 24-hour period and not more than 86 work hours in any 7-day period, excluding shift turnover;
 - A minimum 10-hour break is provided between successive work periods;
 - 12-hour shifts are limited to not more than 14 consecutive days;
 - A minimum of 6 days off are provided in any 30-day period; and
 - Requirements have been established for behavioral observation and self-declaration during the period of the requested exemption.

Therefore, the NRC finds that the technical basis for an exemption described in the March 28, 2020, letter is applicable to your specific request.

Section 26.9, "Specific exemptions," allows the NRC to grant exemptions from the requirements of 10 CFR Part 26. The NRC staff has determined that granting the licensee's requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The underlying purpose of 10 CFR 26.205(d) is to prevent impairment from fatigue due to duration, frequency, or sequestering of successive shifts. Based on the evaluation provided in the NRC's March 28, 2020, letter and the criteria discussed above, no new accident precursors are created by utilizing whatever licensee staff resources may be necessary or available during the term of this requested exemption to respond to a plant emergency and to ensure that the plant maintains a safe and secure status. Therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not increased because there is no change in the types of accidents previously evaluated. The requested exemption would allow the utilization of licensee staff resources as may be necessary to maintain safe operation of the plant and to respond to a plant emergency. Therefore, the NRC finds that there is no undue risk to public health and safety from granting the requested exemption.

The requested exemption would allow the utilization of licensee security staff resources as may be necessary to ensure the common defense and security. Therefore, the NRC finds that there is no impact on common defense and security from granting the requested exemption.

Due to the impacts that the COVID-19 PHE has had on the licensee's ability to comply with the work hour controls of 10 CFR 26.205(d), the importance of maintaining the operations of the [PLANT NAME, UNIT(S)], and the controls the licensee has established, the NRC finds that granting the requested exemption is in the public interest.

NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25)(vi)(I), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff has determined that approval of this exemption involves no significant hazards consideration; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; no significant increase in individual or cumulative public or occupational radiation exposure; no significant construction impact; and no significant increase in the potential for or consequences from radiological accidents. In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this requested exemption.

Based on the above, the NRC staff finds that (1) the exemption is authorized by law, (2) the exemption will not endanger life or property or the common defense and security, and (3) the exemption is otherwise in the public interest.

F. Last

- 3 -

This exemption is effective until [TIME] on [DATE].

Sincerely,

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No[s]. [DOCKET NO(s)]

cc: Listserv

SUBJECT: [PLANT NAME, UNIT(S) – EXEMPTION FROM SELECT REQUIREMENTS OF 10 CFR PART 26 (EPID L-2020-LLE-XXXX [COVID-19])

DISTRIBUTION:

- PUBLIC
- PM File Copy
- RidsACRS_MailCTR Resource
- RidsNrrDorLpl[BRANCH #] Resource
- RidsNrrDraAplb Resource
- RidsNrrLA[LA NAME] Resource
- RidsNrrPM[PLANT NAME] Resource
- RidsRgn[REGION #]MailCenter Resource

ADAMS Accession No.: ML

***via e-mail**

OFFICE	NRR/DORL/LPL[#]/PM	NRR/DORL/LPL[#]/LA	NRR/DORL/LPL[#]/BC	NSIR/DPCP/RSB/BC*
NAME				ABowers
DATE	/ /20	/ /20	/ /20	3/30/20
OFFICE	NMSS/REFS/ERLRB/BC*	NRR/DRO/D*	OGC (NLO)	NRR/DORL/D
NAME	RElliott	CMiller		CErlanger
DATE	3/31/20	3/30/20	/ /20	/ /20

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Appendix C

Template for Verbal Approval of Exemption

VERBAL AUTHORIZATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PART 26 WORK HOURS EXEMPTION

[PLANT NAME]

[LICENSEE]

[DOCKET NUMBERS]

[DATE]

On [MONTH DAY], 2020, while at 100 percent power, [LICENSEE] identified a need for an exemption from the requirements of 10 CFR 26.205(d)(1) through (d)(7). This need was communicated by [NAME OF SENIOR MANAGER] to the plant Project Manager via e-mail dated [MONTH DAY], 2020.

My name is Craig Erlanger, the Director of the Division of Operating Reactor Licensing. In consultation with the relevant NRC technical branches, I make the following findings.

[Read Approval Letter language]

All other requirements of the code, for which an exemption was not specifically requested and authorized by the NRC staff remain applicable.

This verbal authorization does not preclude the NRC staff from asking additional clarification questions regarding the proposed alternative, while preparing the subsequent written evaluation.