

DOCKET NUMBER PR-50
PROPOSED RULE (50 FR 16506) (11)

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NEW CRITERIA FOR GRANTING EXEMPTIONS
PROPOSED RULE 50FR16506

This letter is in response to the NRC request for comments on the subject proposed amendments to 10CFR Part 50 set forth in the Federal Register, 50FR16506, April 26, 1985.

Stone & Webster Engineering Corporation (SWEC) agrees that the general consideration and more specific criteria proposed could serve as a basis for granting exemptions from NRC regulations. SWEC particularly agrees that the "no undue risk" standard is the appropriate statutory standard for the grant of exemptions. SWEC further agrees that incorporation of this information in 10CFR Part 50 can provide useful guidance and information to the NRC Staff, applicants, licensees, and the public, as well as aid in achieving consistency in regulatory applications.

As a general matter, SWEC believes that Staff judgment is still required in many areas. A large number of regulations are criteria oriented, without specifying a means to accomplish the underlying intent of the regulation. The proposed rule should not be interpreted as requiring exemptions when a "non-standard" method is used as an alternative to methods described elsewhere in guidance documents as opposed to regulations.

The elimination of past Staff practice of using license conditions to deal with temporary non-compliances is an unwarranted restriction of regulatory flexibility. Some regulations can and do present varying requirements depending on plant operating conditions. Such determinations are well within the capability of the Staff. Requiring a formal exemption process for such conditions is an unnecessary burden with potential unwarranted adjudicatory complications.

The proposed rule applies only to 10CFR Part 50. The Appeal Board in Shoreham, ALAB-800, held that an exemption request to 10CFR Part 50 did not constitute an exemption request to 10CFR Part 73. Thus, each part of Title 10, Code of Federal Regulations, contains its own exemption authority. The NRC should consider the need for similar and consistent language throughout its regulations.

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Acknowledged by card.....

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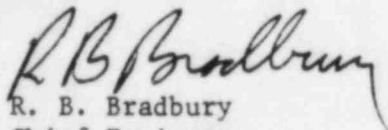
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The proposed rule, in Section 50.12(a)(1), retains the criterion of being in the public interest. The supplementary information accompanying the proposed rule specifies the consideration of equities considered in this determination in addition to the special circumstances identified in proposed Section 50.12(a)(2). There is some overlap between the equities listed in the supplementary information and the special circumstances listed in Section 50.12(a)(2). To the extent the additional equities are considered important, and to inform all parties, they should also be incorporated in Section 50.12(a)(2).

Comparison of the proposed rule with the alternative proposal suggested by Commissioner Asselstine indicates they are very similar in content. However, the provisions in Section 50.12(2)(iii), consideration of alternative or compensatory means, and Section 50.12(a)(2)(vi), temporary relief, are significant special circumstances not specifically addressed in the alternate proposal. These should be included in the rule. Conversely, the alternate proposal, in Section 50.12(a)(2)(iv), identifies issues identified late in the licensing review as a special circumstance not specifically covered by the Commission's proposed rule. This is a significant and not infrequent circumstance, e.g., a new rule, and should be incorporated in the proposed rule.



R. B. Bradbury
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