



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

May 20, 2020

MEMORANDUM TO: Tim Mossman, Chief
Source Management and Protection Branch
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

FROM: Anita Gray, Sr. Health Physicist **/RA/**
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Office of Nuclear Material Safety
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SUBJECT: SUMMARY OF MAY 5, 2020, U.S. NUCLEAR REGULATORY
COMMISSION MEETING TO DISCUSS TEMPORARY
REGULATORY RELIEF FOR PART 37 LICENSEES DURING THE
COVID-19 PUBLIC HEALTH EMERGENCY

Meeting Identifier: 20200506

Date of Meeting: Tuesday, May 5, 2020; 1:00 p.m. EDT

Location: Webinar with Moderated Bridge Line

Type of Meeting: Category 3

Purpose of the Meeting: To discuss how U.S. Nuclear Regulatory Commission (NRC) Part 37 licensees can request temporary regulatory relief during the Coronavirus disease (COVID-19) public health emergency (PHE) through submission of certain exemption requests, and to solicit feedback from Part 37 licensees regarding expected exemption requests.

General Details: On January 31, 2020, the U.S. Department of Health and Human Services declared a PHE for the United States to aid the nation's healthcare community in responding to the COVID-19. The NRC recognizes that during the current COVID-19 PHE, licensees may experience challenges in meeting certain regulatory requirements. On April 7, 2020, the NRC issued a letter to its byproduct material, uranium recovery, decommissioning, fuel cycle, and spent fuel storage licensees that outlined options to seek regulatory relief that may be necessary during the COVID-19 PHE. This letter is available in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession No. [ML20094G166](#).

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To follow up on the April 7 regulatory relief letter, the NRC's Source Management and Protection Branch held a public meeting with licensees required to comply with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials," on May 5, 2020. The meeting was conducted remotely through use of webinar an operator-moderated bridge line. The NRC published the official public meeting notice on April 30 2020, providing webinar registration and bridge line instructions for attendees (ADAMS Accession No. [ML20122A202](#)).

The meeting began at 1:00 p.m. EDT with a 30-minute presentation by NRC staff on regulatory relief pathways and the processes by which Part 37 licensees can request temporary regulatory exemptions. This information is fully detailed in the April 7, 2020, licensee letter cited above, however, key points from the staff's presentation included:

- Exemptions granted during the COVID-19 PHE will be temporary.
- The NRC is evaluating the need for an enforcement guidance memorandum that would authorize inspectors to use discretion not to cite certain violations of requirements when specified criteria are met.
- Licensees can e-mail requests for temporary exemptions from certain regulatory requirements to the directors of the NRC's regional Divisions of Nuclear Materials Safety and NRC's Offices of Nuclear Reactor Regulation and Nuclear Material Safety and Safeguards: James.Trapp@nrc.gov, Region I; David.Pelton@nrc.gov, Region III; Mary.Muessle@nrc.gov, Region IV; John.Monninger@nrc.gov, Division of Advanced Reactors and Non-Power Production and Utilization Facilities; Andrea.Kock@nrc.gov, Division of Fuel Management; and Patricia.Holahan@nrc.gov, Division of Decommissioning, Uranium Recovery, and Waste Programs.
- Agreement States are handling their COVID-19 responses individually; Agreement State licensees should contact their State regulatory agency regarding potential relief pathways.
- Licensees can submit requests for temporary relief via an online submission form that can found on NRC's Web site at <https://www.nrc.gov/about-nrc/covid-19/materials/>. Licensees can call or e-mail their facility project manager to request emergency exemption requests. In urgent, off-hours cases, licensees can call the NRC's Headquarters Operations Officer at (301) 816-5100.

The staff's slide presentation is included as Enclosure 1 and is also available in ADAMS at Accession No. [ML20121A277](#). For discussion purposes, during the presentation the staff cited a draft temporary exemption letter containing information that could inform licensee requests for temporary exemptions from certain security requirements in 10 CFR Part 37 during the COVID-19 PHE. This letter also described the process that the NRC plans to use when reviewing such requests. The information contained in the draft temporary exemption letter, if issued, would be applicable to licensees that possess or use an aggregated quantity of category 1 and 2 radioactive material and was not anticipated to be used for relief requests related to operating power reactors. This draft temporary exemption letter is available at ADAMS Accession No. [ML20121A222](#). Following the staff's presentation, the meeting was then opened to receive public comments. Approximately 394 people participated in the meeting, of which 280 logged into the webinar. A list of NRC meeting participants is included as Enclosure 2. The meeting concluded at 2:30 p.m. EDT.

Summary of Comments Received:

Temporary Exemptions Questions

A question was asked regarding the general nature of the draft temporary exemption letter (ADAMS Accession No. [ML20121A222](#)) and the reason why the letter is marked as “draft.” The NRC staff stated that draft temporary exemption letter is marked as “draft” because the NRC staff is seeking to capture licensee feedback during the public meeting and will conduct a further review to determine if additional expedited exemption requests could be provided to Part 37 licensees.

One commenter asked if the NRC considered offering an expedited review for exemption requests related to the requirement to remove individuals from the unescorted access authorization list within 7 working days in 10 CFR 37.23(e)(5).

In response to the commenter’s question, the NRC staff stated that this question is an example of the type of feedback from licensees the NRC staff is seeking and committed to conducting further review to determine if guidance on requesting expedited relief from this requirement should be added to the letter before it is finalized. A final temporary exemption letter will be issued after the public meeting.

Several comments and questions were raised regarding fingerprinting requirements, with some commenters noting that there have been challenges finding fingerprinting locations with many private companies being closed and police stations not conducting fingerprinting as a result of COVID-19 impact. Some commenters asked if the NRC would entertain exemption requests in the area given potential challenges in obtaining fingerprints; while others questioned the NRC’s logic for allowing expedited review of relief requests from fingerprinting requirements. In response to these comments, the NRC noted that the draft temporary exemption letter contains information which informs licensees of the information necessary to support an expedited temporary exemption from the fingerprinting requirements for the reinvestigation of individuals with unescorted access to material, and recertification for a reviewing official. The NRC staff stated that licensees may seek temporary exemption from this requirement if licensees face challenges in attempting to obtain fingerprinting for individuals with unescorted access during the COVID-19 public health emergency due to the potential for reduced staffing and the potential for a lack of available locations open for licensees to receive the service.

The NRC staff further explained that expedited review of relief requests from fingerprinting and recertification requirements is anticipated to be available, but only in instances where an individual has previously been determined to be trustworthy and reliable. The NRC staff explained that there was no expectation for an expedited review of requests from relief from initial fingerprinting requirements. Moreover, the NRC staff noted that, as part of a request for expedited relief from these requirements, the licensee would be expected to declare that the individual continues to be trustworthy and reliable.

Additionally, a commenter asked if it is possible to have fingerprinting conducted at a sporting goods store or gun shop where background checks are conducted for Firearms Owners identification cards. The NRC staff responded that, for reviewing officials, the fingerprinting must be conducted at an authorized location pursuant to 37.23(b)(2).

A question was asked regarding extending the timeframe of exemptions (such as for Annual Refresher Training) due to unforeseen circumstances in which the licensee is not able to come back into regulatory compliance before the end of the 90-day exemption period due to

furloughs. The NRC staff responded that, in such a situation, the licensee could request an additional 90-day exemption or explore other options to address the challenges.

A commenter inquired about the type of encryption required for annual security refresher training taken online, while another commenter asked if training that was password protected would suffice. The NRC staff responded that the NRC does not endorse specific software tools but noted that the NRC requires that the licensee keep security plans, operating procedures, and list of individuals that have been approved for unescorted access in a safe and secure manner as required in 10 CFR 37.43(c)(7). The NRC staff further stated that additional guidance can be found in NUREG-2155, "Implementation Guidance for Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material."

A couple of commenters asked if the NRC had a position or guidance on critical personnel (e.g., radiation safety officers, reviewing officials) being furloughed from their position. The NRC staff responded that the NRC regional office or licensing representative should be informed of this situation for further guidance.

Inspection Questions

Several commenters asked questions about on-site inspections. One commenter asked if inspectors will call before coming on-site for an inspection. The NRC staff responded that, as the agency had previously announced, no routine inspections will be conducted during the public health emergency "until further notice." The information regarding the resumption of onsite materials inspections (i.e., end of April) on the nuclear materials public Web Site, <https://www.nrc.gov/about-nrc/covid-19/materials/>, will be updated accordingly. In addition, the NRC staff stated that during this public health emergency, the NRC would consider conducting an inspection if there is an occurrence of an event with significant health and safety impacts. In this case, the NRC staff stated that the inspection would be announced and coordinated with the licensee.

Blanket Exemptions Questions

A few commenters asked the NRC to issue blanket exemptions for Part 37 licensees. The NRC staff responded that, although the NRC continues to explore the possibility of blanket exemptions, some of the Part 37 requirements tend to be more site specific and less general in nature and do not lend themselves well to a blanket exemption. The NRC staff stated that it will continue to monitor developments related to COVID-19 PHE for more general impacts to licensees.

A commenter suggested that reinvestigations might be a good requirement to consider for a blanket exemption. The NRC staff responded that, because of the varied ability by licensees to meet the requirement, a blanket exemption may not be appropriate.

Another commenter stated that several work sites closed or were otherwise off limits to radiography contractors and that they have personal dosimetry and auxiliary radiographic testing safety equipment stored at these sites. The commenter asked if a regulatory issue will exist after the public health emergency ends due to the inability to access the items. The commenter also inquired if there is a need to file a COVID relief request for exceeding personal monitoring (processing) and equipment maintenance and inspection. The commenter suggested that a blanket exemption would be useful. The NRC staff responded that the licensing representative should be contacted to discuss relief request options.

Other General Questions

A commenter requested that the NRC provide the top three exemption relief requests received thus far. Because the agency had not yet received many exemption requests in this area, the NRC staff did not provide a top three list, but rather provided some examples of the requests for relief received to date, including requests for relief from annual training, recertification, and maintenance and testing requirements. The NRC staff noted that general information regarding temporary relief requests can be found on the nuclear materials public Web site at <https://www.nrc.gov/about-nrc/covid-19/materials/>.

Several commenters asked questions that were related to the operation of nuclear reactors. The NRC stated that the information presented in this public meeting was applicable to licensees that possess or use an aggregated quantity of category 1 and 2 radioactive material such as sealed sources used for industrial radiography and well-logging, and other industrial applications. The NRC staff noted that this information should not be used for relief requests related to operating power reactors. The NRC staff provided NRC's COVID-19 response Web site for regulatory activities for nuclear reactors, <https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html>. The NRC staff also noted that the Office of Public Affairs at OPA.Resource@nrc.gov was a good resource for information related to the operation of power reactors.

Next Steps: The NRC staff will review the feedback provided by Part 37 licensees during the public meeting and will determine if any modifications should be made to the draft temporary exemption letter prior to its issuance. The NRC will communicate finalization of the draft temporary exemption letter and any other COVID-related regulatory announcements via the Materials Security Information GovDelivery e-mail service. To subscribe to the Materials Security Information GovDelivery e-mail service, send an email to Paul.Goldberg@nrc.gov with the word "subscribe" in the subject line. If licensees have questions regarding exemptions or the request process, they should contact their NRC licensing representative, or e-mail questions to George.Smith@nrc.gov.

Enclosures:

1. May 5, 2020 Meeting Slides (ML20121A277)
2. NRC Meeting Participants (ML20134H967)

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DATE: May 20, 2020

DISTRIBUTION:

Public

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ADAMS Accession Nos.: PKG ML20134H965;

NRC Slide Presentation ML20121A277; NRC Meeting Participants ML20134H967

***via email**

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