

February 3, 1997

MEMORANDUM TO: FCLB Staff

FROM: Michael F. Weber, Chief  
Licensing Branch  
Division of Fuel Cycle Safety  
and Safeguards, NMSS

SUBJECT: COMMISSION GUIDANCE ON EXEMPTIONS

The Commission recently approved the staff's proposed action in a Commission paper (SECY 96-249) on reducing the need for exemptions and ensuring consistency of the exemption process. The Commission's decision provides additional guidance to the staff on the general process of considering exemption requests. I have attached a copy of the Staff Requirements Memorandum (SRM) on SECY 96-249 for your information and use in discussions with licensees.

Please note in particular the Commission's statement in the second paragraph of the SRM that reads "[t]he Commission believes that the staff should apply the regulatory criteria for exemptions objectively and without any preconceived notion that exemptions should either be limited or circumscribed or, conversely, readily available for anyone who seeks an exemption." We should be applying this approach in discussions with licensees who may be seeking an exemption from a particular requirement.

Much of the rest of the SRM places the onus on the staff to modify and correct regulations that engender an inordinate volume of exemption requests. Where we identify such regulations, we need to promptly communicate the need for regulatory revisions to the Office of Nuclear Regulatory Research through a "User Need" memorandum. You should also note in the closing of the SRM that the Commission has requested the staff to list the number of exemption requests received and the number granted or denied in the semiannual updates of the Rulemaking Activity Plan. I anticipate that procedures will need to be developed to provide periodic updates on the status of exemption requests.

As we renew licenses, all of us need to carefully review any previous exemptions that have been issued to the fuel cycle licensees and either reaffirm the appropriateness of the exemption or conclude that the exemption can no longer be justified. Do not simply continue past exemptions without a proper and thorough review. In addition, be sensitive to recurring exemptions. If you identify one, please bring it promptly to your Section Chief's and my attention, so we can assess the need for a corrective rulemaking.

Attachment: As stated

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

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January 29, 1997

MEMORANDUM TO: Hugh L. Thompson, Jr.  
Acting Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-96-249 - STAFF  
RESPONSE TO SRM ON SECY-96-147 REGARDING  
REDUCING NEED FOR EXEMPTIONS AND CONSISTENCY  
OF THE EXEMPTION PROCESS

The Commission has approved retaining (1) the current criteria contained in 10 CFR 50.12 for considering exemption requests from reactor licensees, and (2) the current general criteria for considering specific exemptions requested by materials licensees. In addition, the Commission agrees that the staff's own internal process for the staff's evaluation of exemption requests is adequate. With regard to this internal staff review process, the staff should develop more explicit guidance to ensure the quality, objectivity and consistency of exemption packages.

(EDO) (SECY Suspense: 7/31/97)

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The Commission is concerned, however, that the recent Commission focus on exemptions (to identify regulations that are unclear or difficult to comply with so that such regulations may be corrected) may have caused a misunderstanding by the staff and affected the application of the exemption criteria, resulting in an attempt by the staff to limit or reduce the number of exemptions that the NRC considers and grants. In fact, the Commission has not set any particular goals or limits on the number of exemption requests that can be considered or granted. The Commission believes that the staff should apply the regulatory criteria for exemptions objectively and without a preconceived notion that exemptions should either be limited or circumscribed or, conversely, readily available for anyone who seeks an exemption. Objective evaluation of exemption requests will ensure that inappropriate regulatory requirements will be more readily identified through the number of exemption requests that are received.

If particular regulations are unclear or difficult to comply with such that they engender an inordinate volume of exemption requests (so called "recurring exemptions"), the staff should seek promptly to modify and correct these regulations and, in the interim period before completion of the corrective rulemaking, grant those exemptions that are properly justified under the exemption criteria. In addressing the "recurring exemption" problem, the staff should expeditiously proceed with the rulemaking fixes to those regulations that have engendered recurring exemption requests. These corrective rulemaking

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actions should not be delayed to incorporate "performance-based" regulatory concepts where such concepts are not necessary to address the "recurring exemption" issue. Candidate rulemaking activities resulting from reviews of experience with exemptions should continue to be noted and progress reported in the semiannual updates of the Rulemaking Activity Plan.

As a general practice, the grant or denial of specific exemptions is purely a staff responsibility that does not involve the Commissioners. However, the Commission reserves to itself the responsibility for policy determinations that guide these staff actions. To allow for routine Commission monitoring (for "recurring exemption" requests), the staff should include in the semiannual updates of the Rulemaking Activity Plan a listing and description of the applications for exemptions that have been received and the exemption applications that have been granted or denied during the period which is the subject of the semiannual update.

cc: Chairman Jackson  
Commissioner Rogers  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)