

## SAFEGUARDS EVALUATION REPORT

DOCKET NO.: 70-143

LICENSEE: Nuclear Fuel Services, Inc.  
Erwin, Tennessee

SUBJECT: REQUEST FOR EXEMPTION FROM TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* (10 CFR) 73.46(b)(9)

### REQUEST

By letter dated September 14, 2021 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML21260A244), Nuclear Fuel Services, Inc. (NFS) submitted a request for an exemption from certain requirements of 10 CFR 73.46(b)(9). The U.S. Nuclear Regulatory Commission (NRC) identified that supplemental information was needed before its detailed technical review of the exemption request could begin, and sent a request for supplemental information via email, dated September 29, 2021 (ADAMS Accession No. ML21273A379). NFS provided the supplemental information by letter dated October 14, 2021 (ADAMS Accession No. ML21307A164). In particular, NFS requests an exemption from the provisions in 10 CFR 73.46(b)(9) that require, during a 12-month period, Tactical Response Team and guard exercises at intervals of at least every four months for each shift, and observation of a force-on-force (FOF) exercise by the NRC. In addition to requesting an exemption from the NRC-observed FOF exercise, NFS also requested an exemption from the remaining FOF exercises during the current 12-month period ending December 31, 2021. Contingent on how the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) continues to affect the local community, NFS proposes to resume normal operations with respect to FOF exercises in the first quarter of calendar year 2022.

### BACKGROUND

Currently, NFS is required to conduct tactical response team and guard exercises at least every 4 months during each 12-month period as defined under 10 CFR 73.46(b)(9) for each shift, one third of which are to be FOF. During each 12-month period, 10 CFR 73.46(b)(9) states that the NRC shall observe one of the FOF exercises which demonstrates overall security system performance. The licensee shall notify the NRC of the scheduled exercise 60 days prior to that exercise.

NFS states that impacts from the COVID-19 PHE related local conditions prevent NFS from safely conducting two FOF exercises, one of which was to be NRC-observed, as planned. In August 2021, the northeast Tennessee region, which includes Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi (where NFS is located), and Washington counties reported a resurgence in new COVID-19 cases. The regional hospitals provided an update on September 7, 2021, that there have been continued increases in new COVID-19 cases in the local area due to the highly contagious Delta variant. Case counts since early July 2021 of less than 200 have increased above 6,000 active cases. In the 4 days prior to the NFS submittal dated September 14, 2021, the region reported 2,692 new positive COVID-19 cases, continuing the region-wide trend of increased viral spread. The region's hospitals and affected counties have also asked for assistance from the public to prevent this trend from continuing.

Recently the NFS facility reinstated several COVID-19 protective measures for individuals regardless of vaccination status. NFS continues to enforce Federal guidance on social distancing by limiting attendance in meeting rooms, maintaining proper distances from each other, and use of video and teleconferencing when available. Site personnel are encouraged to stay home when sick and report all contact with positively tested individuals so quarantine can be quickly implemented when necessary.

Because of the rising positive COVID-19 cases in the region and number of officers and support staff involved in FOF exercises, NFS has concluded that FOF exercises cannot be conducted without unnecessarily increasing the risk of exposing protective force members, on-site support staff, and potentially members of the public to COVID-19.

NFS notes that they conducted two NRC-observed tabletop exercises on September 22, 2021, during an NRC physical security inspection because the NRC-observed FOF exercise was not conducted. NFS stated that limited scope performance exercises require less support staff and a smaller contingent of officers than FOF exercises. NFS concludes that limited scope performance exercises can be conducted safely without increasing the risk of exposing protective force members, on-site support staff, and members of the public to COVID-19. NFS plans to conduct four limited scope performance exercises in the fourth quarter of 2021. NFS will continue to assess the conduction of limited scope performance exercises during the COVID-19 PHE to ensure the safety of personnel and the public.

NFS states that there is no undue risk to public health and safety from granting the requested exemption because it will minimize the risk of exposure and potential spread of COVID-19. NFS notes that the requested exemption does not decrease the effectiveness of the physical protection plan, nor involve changes to security at the facility given the alternative tabletop exercises that it plans to implement if the exemption is granted. Therefore, NFS concludes that granting the exemption will have no impact on common defense and security.

#### DISCUSSION – NRC STAFF REVIEW PURSUANT TO 10 CFR 70.17(a)

Pursuant to 10 CFR 70.17(a), the NRC may grant an exemption from the requirements of 10 CFR Part 70 if the staff determines that the 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 NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or the Commission's regulations. Therefore, the requested exemption is authorized by law.

Licensee FOF exercises demonstrate the licensee's overall security system effectiveness and the ability of the security force to perform response and contingency plan responsibilities. These exercises also demonstrate that members of the contingency response team possess the necessary skills to carry out their assigned responsibilities. Fulfilling the requirements in 10 CFR 73.46(b)(9) is just one element of meeting the general performance objective of establishing and maintaining a physical protection system which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. NRC acknowledges that while FOF exercises provide a critical means of demonstrating the licensee's ability to protect special nuclear material, conducting limited scope performance exercises provides a level of assurance that the licensee can successfully implement its physical protection program. The licensee is also still required to have a physical

protection system that meets the performance capabilities in 10 CFR 73.45, and the physical protection requirements in other portions of 10 CFR 73.46. Additionally, the licensee commits to performing tabletop exercises that will test some of the skills tested during a FOF exercise. This will help mitigate the impact of the licensee not performing full scope FOF exercises during this limited period of time. For these reasons, the NRC staff has determined that temporarily exempting NFS from the requirement to conduct FOF exercises in accordance with the frequency set forth in 10 CFR 73.46(b)(9) will not endanger life or property or the common defense and security.

NFS plans to conduct the missed NRC-observed exercise during the first quarter of 2022. NFS is expected to communicate with the NRC on rescheduling the annual observed exercise to a mutually agreeable date. Should the COVID-19 PHE continue to affect the local community into 2022, the NRC would consider an extension to the exemption or amendment based on a subsequent request that updates all the information in the initial request. Based on its review of the provided information and establishment of the noted timeframe to resume the FOF exercises, the NRC staff concludes that granting this exemption request would not endanger life or property or the common defense and security.

Finally, granting this exemption request is otherwise in the public interest because it promotes public health and safety by following social distancing and assembly restrictions recommended by COVID-19 guidance from Federal and State Government agencies. The exercises may necessitate that the involved participants come within close contact with one another. Therefore, the exercises could provide potential exposure pathways for spreading the COVID-19 virus that may not be prevalent during routine operations at the facility and would not be consistent with the social distancing and assembly guidelines. The exemption would modify two tactical response team and guard FOF exercises scheduled to be completed before December 31, 2021. The revised timeframe will also aid in limiting the current outbreak of COVID-19 and promote public health. The FOF exercises that were missed will be performed as limited scope exercises before December 31, 2021.

## ENVIRONMENTAL REVIEW

Pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(G), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion, provided that: (i) there is no significant hazards consideration, (ii) there is no significant increase in the amounts of any effluents that may be released offsite, (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure, (iv) there is no significant construction impact, (v) there is no significant increase in the potential for or consequences from radiological accidents, and (vi) the requirements from which an exemption is sought involve, as relevant here, scheduling requirements.

For the reasons described below, NFS's request meets the criteria for a 10 CFR 51.22(c)(25) categorical exclusion. NFS is not a reactor and this exemption is limited to security exercises, so there are no significant hazards considerations. Because the request by NFS pertains to an exemption from conducting security exercises, there are no effluents or offsite releases or significant increase in radiation exposure to workers or members of the public associated with this request. There are no construction activities associated with this request, so there is no significant construction impact. There is no significant increase in the potential for any radiological accidents associated with this request because the temporary postponement of the observation and performance of tactical response team and guard exercises does not affect the facility's safe operations. Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(G),

no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

### CONCLUSION

Based on its review above, the NRC staff concludes that the issuance of this exemption is in compliance with law and will not endanger life or property or the common defense and security. The staff also concludes that granting the exemption is in the public interest. Accordingly, the NRC hereby grants NFS an exemption from the requirements in 10 CFR 73.46(b)(9) pertaining to timeframes associated with carrying out FOF exercises, including the NRC-observed FOF exercise, until December 31, 2021.

A new Physical Protection License Condition SG-3.8 has been added to reflect the exemption as follows:

SG-3.8 Notwithstanding the requirements of 10 CFR 73.46(b)(9), the licensee is exempt from conducting force-on-force exercises through December 31, 2021; after that date, the licensee shall resume exercises at their regular frequency.

Furthermore, the licensee commits to communicating with the NRC to reschedule the annual observed exercise on a mutually agreeable date during the 1st Quarter of calendar year 2022.

### PRINCIPAL CONTRIBUTORS

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