

April 7, 2006

MEMORANDUM TO: James P. Dwyer, Chief
Commercial and R&D Branch
Division of Nuclear Materials Safety, RI

FROM: Thomas H. Essig, Chief **/RA/**
Material Safety and Inspection Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

SUBJECT: RESPONSE TO TECHNICAL ASSISTANCE REQUEST DATED
JANUARY 24, 2006; COLLEGE OF WILLIAM AND MARY

I am responding to your technical assistance request (TAR) dated January 24, 2006 (enclosed) concerning the College of William and Mary.

Issue: In a TAR dated January 24, 2006, Region I requested assistance in determining if an exemption from 10 CFR 30.32(g) is warranted to allow a licensee, whose license is under renewal, to use sealed sources in its possession that are not identified on its license by manufacturer's name or model number. The TAR was a followup to a TAR dated January 8, 2006, requesting whether an alternative to granting an exemption might be considered to continue to allow the licensee to continue to use these sources pursuant to existing guidance in NUREG 1556, Volume 7.

Action: The licensee's request should be reviewed in accordance with the criteria of 10 CFR 30.11 to determine whether an exemption to 10 CFR 30.32(g) is warranted. If the exemption is found to be warranted, the license may be renewed with the authorization for sealed sources as any form. The licensee may not be allowed to continue to use these sources absent the granting of an exemption.

Background: The licensee's license is under renewal. In accordance with 10 CFR 30.32(g), the license reviewer asked the licensee to identify all sources by manufacturer and model number as registered with the Commission under 10 CFR 32.210 or with an Agreement State.

The licensee stated that most of its source inventory consists of sealed sources which have long been in its possession and that most do not bear a manufacturer's name or model number, and that it therefore would be unable to provide that information. By letter dated October 31, 2005, the licensee requested an exemption from 10 CFR 30.32(g) for these sources.

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In a draft TAR submitted for review on January 8, 2006, the Region asked whether an alternative to granting the exemption might be to utilize guidance described in NUREG 1556, Volume 7, "Program -Specific Guidance About Academic, Research and Development, and Other Licenses of Limited Scope, Section 8.5.1. The guidance in that section indicates that licensees may continue to use older sources specifically approved on their licenses absent listing the manufacturer's name and model number.

Following a TAR Panel held on January 11, 2006, which concluded that the guidance in NUREG 1556, Volume 7, conflicted with 10 CFR 30.32(g), the Region submitted a second TAR dated January 24, 2006. In that TAR, the Region stated that the sources are of low activity and have been used without incident for many years. The Region stated further that the only alternatives are to: (1) list the sources on the license as "any" form, requiring additional training and experience, facilities and equipment and financial assurance; or (2) require that the licensee dispose of the sources prior to renewal of the license.

Discussion: The provisions of 10 CFR 30.32(g) require an applicant for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source to either identify the source or device by manufacturer and model number as registered with the Commission under 10 CFR 32.210 of this chapter or with an Agreement State; or provide the information identified in paragraph 32.210(c).

We note that 10 CFR 30.32(g) only applies to the applicant, it does not specify what authorization or conditions NRC might place on a license, or how it might write the license. If the NRC has determined that there is a basis for an exemption to these requirements, how the license is prepared is established through policy. In the circumstances of this case, where the sources are of low activity and have been used without incident for many years, a basis may exist for an exemption.

10 CFR 30.11 provides that the Commission may grant an exemption from the requirements in Part 30 if it determines that this is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. If an exemption can be granted, the license could be renewed with the authorization for sealed sources and other sealed materials as currently written. Two facts could serve as bases for granting an exemption: (1) the licensee is qualified by sufficient training and experience and has sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form; and (2) there is historical evidence that the licensee has handled these and similar sources without incident. The Region needs to make this determination. The Region should follow the guidance detailed in Subsection 4.13, "Processing of Exemptions For Material Licensees" of NUREG-1556, Volume 20.

In addition, please note that, for the exemption, an Environment Assessment/Finding Of No Significant Impact (EA/FONSI) must be prepared and published in the Federal Register (FR) in accordance with the provisions of 10 CFR 51. In previous cases, for simple actions like this, the Regional offices have generally drafted an EA/FONSI/FR combination notice because the licensing staff is more familiar with the licensee's activities. We have provided examples of such notices previously, but can provide them again if needed. The Office of Nuclear Material Safety and Safeguards can finalize the notice and take it through the steps to have it published.

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In addition, please note that, for the exemption, an Environment Assessment/Finding Of No Significant Impact (EA/FONSI) must be prepared and published in the Federal Register (FR) in accordance with the provisions of 10 CFR 51. In previous cases, for simple actions like this, the Regional offices have generally drafted an EA/FONSI/FR combination notice because the licensing staff is more familiar with the licensee's activities. We have provided examples of such notices previously, but can provide them again if needed. The Office of Nuclear Material Safety and Safeguards can finalize the notice and take it through the steps to have it published.

Enclosure:
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