

April 24, 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 25, 2006;THE SARNOFF CORPORATION

I am responding to your technical assistance request (TAR) dated January 25, 2006 (enclosed) concerning the Sarnoff Corporation.

Issue: In a TAR dated January 25, 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 continue to use a sealed source in its possession that had long been in use by the licensee, but had never been submitted for review and registration. The TAR stated that the licensee reported that the source had not been submitted because the guidance in NUREG 1556, Volume 3 (Revision 1), Section 5.1.1 provides that sealed sources containing 10 microcuries or less of alpha-emitting radioactive material and 100 microcuries or less of beta and/or gamma-emitting radioactive materials are not required to be registered. Recognizing that the guidance appeared to conflict with 10 CFR 30.32(g), the Region submitted a draft TAR dated January 8, 2006, requesting that beta and/or gamma reference sources of 100 microcuries or less and alpha emitting reference sources of 10 microcuries or less be listed as calibration or reference sources on the license as provided by the guidance in NUREG 1556, Volume 3.

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 the sealed calibration source.

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

The licensee reported that the source was never submitted for review and registration because of the guidance provided in NUREG 1556, Volume 3 (Revision 1).

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In a draft TAR submitted for review on January 8, 2006, the Region asked whether, since the licensee did not possess the knowledge or information needed for registration, the license review should classify this source on the license as in "any" form and require that the licensee provide the requisite financial assurance, or whether it would be acceptable to consider the source a sealed source for financial assurance purposes and list the source as an Amersham Model ACR2 Series reference source on the license notwithstanding that the source had not been registered in accordance with 10 CFR 32.210.

A TAR Panel held on January 11, 2006, concluded that the guidance in NUREG 1556 Volume 3 conflicted with 10 CFR 30.32(g), and that the licensee would need to request and be granted an exemption before the sources could be listed on the license as sealed sources without the specific information as to manufacturer and model number. The licensee requested this exemption in a telephone discussion with the Region's license reviewer following the TAR Panel. Subsequently, the Region submitted a second TAR dated January 25, 2006. In that TAR, the Region requested that a determination be made if an exemption is warranted. The Region also stated in the TAR that the decision not to require an SS&D review for these low activity sources was due to the low safety significance of a source failure.

Discussion: 10 CFR 30.32(g) requires 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 source is of low activity and has 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.

The following 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 has the necessary financial assurance; (2) there is historical evidence that the licensee has handled this and similar sources without incidence; (3) and the source has been tested by the manufacturer and found to far exceed the performance requirements of the applicable ANSI standard for calibration sources, i.e. the source achieved a classification of 77C34343 vs the required 77C22212 in ANSI N542 tests. 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. NMSS can finalize the notice and take it through the steps to have it published.

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Enclosure:
Region I Technical Assistance Request

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