

August 5, 1997

MEMORANDUM TO: Multiple Addressees

FROM: Carl J. Paperiello, Director (Original signed by W. Kane for)
Office of Nuclear Material Safety
and Safeguards

SUBJECT: NMSS POLICY AND PROCEDURES LETTER 1-58,
PROCESSING OF EXEMPTIONS FOR MATERIAL
LICENSEES AND CERTIFICATE HOLDERS

Policy and Procedures Letter 1-58 (Attachment 1) provides guidance to Headquarters personnel in granting or denying requested exemptions to Nuclear Regulatory Commission regulations. This guidance has been developed in accordance with the Staff Requirements Memorandum dated January 29, 1997, responding to SECY-96-249, "Staff Response to SRM on SECY-96-147 Regarding Reducing Need for Exemptions and Consistency of the Exemption Process" (Attachment 2). The staff was directed to develop more explicit guidance to ensure the quality, objectivity, and consistency of exemption packages. Such evaluation of exemption requests will ensure that inappropriate regulatory requirements will be more readily identified.

All exemption requests, to include those granted by the regions, will be referred to the Generic Assessment Panel (GAP). GAP, in conjunction with the lead technical Division, will identify regulations that are unclear or difficult to comply with for possible rulemaking. Additionally, a listing and description of all requested, granted, and denied exemptions will be added to the Rulemaking Activity Plan for routine monitoring by the Commission. To maintain this information, exemption requests received, granted, or denied will be entered into the Licensing Tracking System (LTS) as previously detailed in Policy and Procedures Letter 1-51, Rev. 1, "Policy and Criteria for Initial Processing of Incoming Licensing Actions," dated April 10, 1997, (Attachment 3). If the LTS has not been upgraded to accommodate these actions, a manual list shall be maintained.

Attachments:

1. PPL 1-58
2. SRM, dtd 1/29/97
3. PPL 1-51, dtd 4/10/97

CONTACT: Gary W. Purdy, IMNS/NMSS
(301) 415-7897

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Attached List for memorandum dated: August 5, 1997

SUBJECT: NMSS POLICY AND PROCEDURES LETTER 1-58, PROCESSING OF EXEMPTIONS FOR MATERIAL LICENSEES AND CERTIFICATE HOLDERS

Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
and Safeguards, NMSS

John T. Greeves, Director
Division of Waste Management, NMSS

William F. Kane, Director
Spent Fuel Project Office, NMSS

John J. Linehan, Director
Program Management, Policy Development
and Analysis Staff, NMSS

Donald A. Cool, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

Background:

These procedures provide guidance to Headquarters personnel in granting or denying requested exemptions to NRC regulations. This guidance has been developed in accordance with Commission direction in a Staff Requirements Memorandum dated January 29, 1997, (Attachment 2) responding to SECY-96-249, "Staff Response to SRM on SECY-96-147 Regarding Reducing Need for Exemptions and Consistency of the Exemption Process." The staff was directed to develop more explicit guidance to ensure the quality, objectivity, and consistency of exemption packages. Such evaluation of exemption requests will ensure that inappropriate regulatory requirements will be more readily identified.

In accordance with Policy and Guidance Directive 1-26, "Processing of Exemptions for Material Licensees," the regions can grant exemptions which are considered routine without notification to Headquarters. All non-routine exemption requests are referred to Headquarters for review.

Policy:

NRC's policy is to ensure that exemptions to the regulations must not present an undue risk to public health and safety and are consistent with the common defense and security. Criteria for granting exemptions must be applied objectively, consistently, and without preconceived notions that exemptions should be limited or circumscribed.

Procedure:

All exemption requests and the associated staff responses will be reviewed by the Office of General Counsel (OGC) and by the Generic Assessment Panel (GAP). GAP, in conjunction with the lead technical Division, will identify regulations that are unclear or difficult to comply with for possible rulemaking.

All requests for an exemption must be accompanied by:

- a. A description of the exemption needed and justification;
- b. Compensatory safety measures as necessary to provide a level of health and safety equivalent to the regulation from which the exemption is being requested; and
- c. The licensee's assurance that consideration of all reasonable alternatives for complying with the regulation has been exhausted.

Upon receipt of the request the reviewer should update the Licensing Tracking System (LTS), if applicable, to reflect the exemption requested. The reviewer should determine if the licensee or certificate holder has sufficient justification for the request, and that the intent of the requirement from which the exemption is being requested, is not compromised.

After the exemption request and the draft response have been reviewed by appropriate NMSS management:

- a. The exemption request and technical review are sent to OGC for review.
- b. If the exemption is granted, a condition is added to the license or certificate.
- c. Update the LTS, if applicable, to reflect the granting or denial of the exemption request (Attachment 3).
- d. A copy of the exemption request and technical review is sent to the IMOB GAP coordinator. GAP will coordinate with the lead technical Division to review exemption requests for their generic applicability and need for rulemaking actions.

As detailed in Policy and Procedures Letter 1-51, Rev. 1, "Policy and Criteria for initial Processing of Incoming Licensing Actions," dated April 10, 1997, all exemptions requested, granted or denied will be tracked in the LTS. If the LTS has not been upgraded to accommodate these actions, a manual list shall be maintained.

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)

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

Attachment 2

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)