

December 19, 2013

Mr. Marvin S. Fertel
President and Chief Executive Officer
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

Dear Mr. Fertel:

I am responding to your October 29, 2013, letter related to the recent lapse in Federal government appropriations and the U.S. Nuclear Regulatory Commission's (NRC) determination of which employees and functions were considered to fall under the Antideficiency Act's (ADA) "emergency" exception. Prior to and during the recent lapse of appropriations and government shutdown, the NRC remained committed to ensuring the safe and secure operation of licensed facilities and associated licensed activities. The NRC considered carefully which NRC activities could, within the limits of the ADA, remain active during the shutdown. We were in close contact with the Office of Management and Budget (OMB) on a daily basis to ensure that we kept abreast of all updated U.S. government-wide guidance and associated activities of other agencies affected by the shutdown. The NRC remained within the bounds of the law when making determinations of which emergency excepted functions may be addressed by the agency during a government shutdown.

In the absence of an appropriation, an agency is prohibited from incurring obligations and regular functions must cease (shutdown). However, the ADA contains a narrowly interpreted emergency function exception that allows agency staff to perform activities that serve to protect human life or property from imminent danger. Current OMB guidance on shutdown planning and standards allows agencies to identify their emergency excepted functions under the ADA.

The NRC Management Directive (MD) 4.5, "Contingency Plan for Periods of Lapsed Appropriations," is NRC's contingency plan and guidance for periods when NRC funding has lapsed or been exhausted. MD 4.5 contains a list of these "excepted functions" and a description of what constitutes an excepted activity. Generally, during a shutdown, the NRC staff may only conduct those NRC activities that protect the public from imminent danger and perform those functions required to sustain those activities. Cost, economics, and fee billing cannot be the basis for finding that NRC consideration of an action is an excepted function. Consistent with OMB guidance, the NRC deems as "excepted" only the employees necessary for the performance of the excepted functions. However, the NRC will also call back furloughed staff on an "as-needed" basis whenever necessary to accomplish an excepted function, and such staff will become excepted until the situation is resolved.

Emergency excepted activities that address some imminent threat to public health and safety may include the processing of exigent or emergency license amendments or unique

circumstances related to grid reliability that are separate from an economic or generic need for power. As NRC MD 4.5 lists general functions and not specific actions, the NRC would review these situations on a case-by-case basis to determine if the licensing, enforcement, and/or investigative actions would be an emergency excepted function.

In accordance with OMB Circular A-11, dated July 26, 2013, at a minimum agencies should submit updated plans to OMB every four years starting August 1, 2014. As part of this effort, the NRC is reviewing MD 4.5 to determine if any clarifications or changes need to be made to the list of excepted agency functions, and considering lessons learned from the recent government shutdown.

Thank you for your letter and your attention to the public health, safety and security of NRC-licensed facilities and materials.

Sincerely,

/RA/

Allison M. Macfarlane