

NUCLEAR REGULATORY COMMISSION
[Docket No. 50-005; NRC-2016-0153]
Pennsylvania State University Breazeale Nuclear Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a letter dated November 6, 2014, from the Pennsylvania State University (Penn State). In this letter, Penn State requested an exemption from certain regulatory requirements, which, if granted, would allow Penn State to submit its annual financial results within 180 days after the close of each succeeding fiscal year. The NRC staff has reviewed this request and determined that it is appropriate to grant the exemption, as requested.

ADDRESSES: Please refer to Docket ID **NRC-2016-0153** when contacting the NRC about the availability of information about this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2016-0153**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For assistance with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdresource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **The NRC's PDR:** Examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Xiaosong Yin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1404; e-mail: Xiaosong.Yin@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Penn State is holder of Facility Operating License No. R-2, which authorizes operation of the TRIGA Mark III Breazeale Reactor, located at University Park, Pennsylvania. Penn State seeks an extension from 90 to 180 days by exemption from compliance with section 50.75 of title 10 of the *Code of Federal Regulations* (10 CFR), "Reporting and recordkeeping for decommissioning planning," and appendix E, "Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by

Nonprofit Colleges, Universities, and Hospitals,” to 10 CFR part 30, “Rules of general applicability to domestic licensing of byproduct material.” The regulations in 10 CFR part 30, appendix E, require that a nonprofit college, university, or hospital using a self-guarantee for decommissioning funding assurance shall, after the initial financial test, repeat passage of the test and provide financial documentation to the NRC of its continued eligibility to use the self-guarantee 90 days after the close of each succeeding fiscal year.

II. Request/Action

By letter dated November 6, 2014 (ADAMS Accession No. ML14321A408), Penn State requested that the NRC grant a 90-day extension to the reporting requirements of 10 CFR 50.75 and 10 CFR part 30, appendix E. Penn State made this request under 10 CFR 50.12, “Specific exemptions.”

Penn State is currently using a self-guarantee to provide financial assurance for decommissioning, as allowed by 10 CFR 50.75(e)(1)(iii)(C) for nonprofit entities such as universities. The regulation states that “...a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30.”

The regulations in 10 CFR part 30, appendix E, require all entities using a self-guarantee to provide financial assurance for decommissioning to submit annual financial tests within 90 days after the close of each succeeding fiscal year to demonstrate their continued eligibility.

The regulations in 10 CFR 50.12 allow the NRC to grant exemptions to the requirements in 10 CFR part 50, “Domestic licensing of production and utilization facilities,” if it deems that the exemptions are authorized by law, will not present an undue risk to public

health and safety, and are consistent with the common defense and security. The regulations in 10 CFR 50.12 also specify that the NRC will not consider granting an exemption unless special circumstances are present; for example, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, or compliance would result in undue hardship.

Penn State requests an exemption from the requirement to submit its annual financial results information within 90 days after the close of each succeeding fiscal year. Instead, Penn State's exemption request asks to submit this information within 180 days after the close of each succeeding fiscal year.

According to Penn State, the requested exemption is permissible under 10 CFR 50.12 because it will not present a risk to public health and safety, it is consistent with the common defense and security, and the 90-day requirement is not necessary to achieve the underlying purpose of the decommissioning funding rule. Penn State states that it presented the basis for a longer financial recertification time period during the license renewal process (see ADAMS Accession No. ML092650603) and claims that the 90-day rule presents an undue hardship for Penn State. Specifically, Penn State's final financial statements are not available within 90 days of the close of its fiscal year. In part, this is a result of the time necessary for auditing the university finances as a whole, not just the finances for the Breazeale Reactor, which makes the process complex and longer to complete. In addition, Penn State asserts that the requested exemption in no way reduces the effectiveness of the approved decommissioning plan.

Based on the staff's review of Penn State's request for exemption, the NRC believes that Penn State's comprehensive financial reviewing process, which involves Penn State's book balancing, external audits, and the internal approval processes for recertification, does present

a special circumstance whereby the 90-day rule will result in an undue hardship to Penn State. In addition, the NRC believes that allowing Penn State to submit its annual financial results within 180 days instead of 90 days after the close of the succeeding fiscal year will not reduce the effectiveness of its currently approved decommissioning funding plan. Furthermore, the NRC finds that granting this exemption will not present an undue risk to public health and safety, is consistent with the common defense and security, and does not undermine the intent of the stated regulations. Therefore, the NRC has elected to grant Penn State an exemption to the requirement of 10 CFR part 50 and appendix E to 10 CFR part 30, allowing Penn State to submit its annual financial results within 180 days of the close of the succeeding fiscal year.

The NRC notes that Penn State has made good faith efforts to comply with these annual financial reporting requirements. The NRC also notes that the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, issued a similar exemption to Penn State's Type A Broad Scope license (Commonwealth of Pennsylvania PA-0100).

III. Discussion

The Exemption Is Authorized by Law

The staff concluded that 10 CFR 50.12 allows for an exemption to the requirements of the regulations in 10 CFR 50.75 and appendix E to 10 CFR part 30.

The Exemption Presents No Undue Risk to Public Health and Safety

The staff determined that the exemption is related to the Penn State financial surety self-guarantee annual reporting, which does not involve Penn State's reactor operation and safety aspects. Therefore, the exemption presents no undue risk to public health and safety.

The Exemption Is Consistent with the Common Defense and Security

The staff determined that the exemption is related to the Penn State financial surety self-guarantee annual reporting, which does not involve Penn State's reactor operation and safety aspects. Therefore, granting the exemption will have no effect on the common defense and security.

Environmental Considerations

The staff determined that granting an exemption from the requirements of 10 CFR part 50 and appendix E to 10 CFR part 30 belongs to a category of regulatory actions eligible for categorical exclusion. Since this exemption involves only Penn State's self-guarantee financial surety reporting and does not involve the operations of the Penn State Breazeale Reactor, there is no significant hazards consideration, there is no significant change in the types or significant increase in the amounts of any effluents that may be released off site, there is no significant increase in individual or cumulative public or occupational radiation exposure, there is no significant construction impact; and there is no significant increase in the potential for or consequences from radiological accidents as a result of the NRC granting this exemption. The requirements from which the exemption is sought involve surety, insurance, or indemnity requirements. The exemption meets all categorical exclusion requirements of 10 CFR 51.22(c)(25)(i) through (vi). Therefore, in accordance with 10 CFR 51.22(c)(25)(vi)(H), the staff determines that an environmental review is not required.

IV. Conclusion

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Therefore, the NRC hereby grants Penn State an exemption to the requirements in 10 CFR part 50 and appendix E to 10 CFR part 30. As a result of this exemption, Penn State shall submit its annual financial results within 180 days after the close of each succeeding fiscal year.

Dated at Rockville, Maryland, this 25th day of July, 2016.

For the Nuclear Regulatory Commission.

/RA/

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