

**From:** Balazik, Michael  
**Sent:** Wednesday, March 01, 2017 10:04 AM  
**To:** Carolyn Haass (carolyn.haass@nwmedicalisotopes.com)  
**Cc:** Steve Reese  
**Subject:** Applicability of 70.21(f)

Carolyn and Steve,

Just wanted to send some more detailed information on the applicability of 10 CFR 70.21(f) to supplement our phone call yesterday.

As you know, the NRC staff does an environmental review under the National Environmental Policy Act (NEPA) of actions proposed in license applications. For example, the NRC staff prepared a draft environmental impact statement (EIS), pursuant to 10 CFR 51.20, to assess the environmental impacts of the proposed issuance of a Part 50 construction permit (CP) for your proposed facility and the potential operations and decommissioning of that facility. The NRC staff would also conduct a NEPA review, as required by 10 CFR Part 51, if you were to submit a Part 50 operating license (OL) application and/or a Part 70 license application to possess and use special nuclear material (SNM) for activities in your proposed facility.

You recently asked whether the 9-month "prior to commencement of construction" language in 10 CFR 70.21(f) applies to your proposed facility. That provision requires an application for a Part 70 license to possess and use SNM for, among other things, scrap recovery, to be filed at least 9 months prior to commencement of construction of the facility in which the activity will be conducted, and to be accompanied by an environmental report. This requirement ensures that the NRC staff has the necessary information to conduct its NEPA review of Part 70 license applications. While you have not yet submitted a Part 70 license application, your Part 50 CP application indicates that you plan to engage in scrap recovery and other Part 70 activities within the facility that you seek to construct. Therefore, the 9-month "prior to commencement of construction" language in 10 CFR 70.21(f) would apply to the construction of the facility described in your Part 50 CP application.

Your attorney can advise you on NRC's requirements and your options for submitting an application(s), submitting an exemption request, petitioning for rulemaking, etc.

For example, pursuant to 10 CFR 70.17, the NRC may, upon application of an interested person, grant an exemption from the requirements of the regulations in 10 CFR Part 70, including the requirements of 10 CFR 70.21(f). An exemption request must specify why the exemption requested would be authorized by law and would not endanger life or property or the common defense and security and would otherwise be in the public interest.

The NRC staff encourages NWMI to carefully review other NRC regulations to determine if any other regulations could affect NWMI's anticipated schedule for the construction of its proposed facility or its license application(s). For example, 10 CFR 70.23(a)(7) contains requirements regarding the commencement of construction of a facility in which certain Part 70 activities would be conducted.

Regards,

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