



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 27, 2020

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO THE RESPIRATORY PROTECTION REQUIREMENTS FOR ALL LICENSEES DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

Dear Dr. Uhle:

As you know, on January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the U.S. Nuclear Regulatory Commission (NRC), and its regulated entities. In all of our actions, we are committed to following the NRC's Principles of Good Regulation (independence, openness, efficiency, clarity, and reliability) while performing our mission. In keeping with our principles, this letter provides information regarding the NRC's planned actions related to the requirements contained in Title 10 of the *Code of Federal Regulations* (CFR) Part 20 for respiratory protection during the COVID-19 PHE. This information is applicable to all NRC licensees.

Under the NRC's regulations in 10 CFR 20.2301, "Applications for exemptions," "The Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not result in undue hazard to life or property." Consistent with this regulation and as described in this letter, the NRC is prepared to consider on an expedited basis requests for exemptions, upon request from individual licensees, from medical evaluation frequency and fit-testing frequency requirements that are specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6). These exemptions would, if granted, facilitate the licensee's implementation of these requirements in a manner that does not conflict with practices recommended by the Centers for Disease Control and Prevention (CDC) to limit the spread of COVID-19.¹ The NRC notes that the regulatory positions regarding respiratory protection-related medical evaluation and fit-testing frequencies in Regulatory Guide (RG) 8.15, Revision 1, "Acceptable Programs for Respiratory Protection" (Agencywide Documents Access and Management System Accession No. ML003739528) allow for the occasional application of 90-day grace periods from the due dates of these requirements. Licensees may take advantage of this flexibility without any additional action from the NRC. The exemption requests contemplated in this letter could, if

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

approved, allow licensees to go beyond the scope and duration of the grace periods contemplated in RG 8.15, Revision 1.

Requested Information

Medical Evaluations: To receive expedited review of exemption requests from 10 CFR 20.1703(c)(5)(iii), licensees should submit a request that contains the following information:

- a statement that the licensee cannot meet the medical evaluation requirements of 10 CFR 20.1703(c)(5)(iii) without workers taking actions that may be contrary to CDC's guidance for responding to the COVID-19 PHE;
- a statement indicating whether the licensee would, for the duration of any exemption approved by NRC, apply a licensee-specific process to manage personnel with overdue medical evaluations, while ensuring the safety of its workers;
- an estimate of the number of personnel who would be covered by the exemption and their organizational positions, using generic position descriptions, that will be included in the licensee-specific process;
- the date and time when the exemption would be implemented, if approved, and when the licensee-specific process would take effect;
- a statement indicating whether this exemption would only be used by personnel having known, stable medical histories as determined and documented by a licensed physician;
- a statement that, except for physical medical examinations at medical facilities, the licensee has completed, or will complete within the required frequency (plus a 90-day grace period), all applicable respiratory protection program medical evaluation requirements (e.g., medical history questionnaire); and
- a statement that a licensed physician has reviewed the medical history questionnaire prior to the expiration of the current medical evaluation (plus a 90-day grace period) and has determined and documented that an extension of the wearer's physical medical evaluation due date is acceptable such that the wearer remains qualified to use assigned respiratory protection equipment during the extension.

Fit-Testing Requirements: To receive expedited review of exemption requests from 10 CFR 20.1703(c)(6), licensees should submit a request that contains the following information:

- a statement that the licensee cannot meet the fit-testing requirements of 10 CFR 20.1703(c)(6) without workers taking actions that may be contrary to CDC guidance for responding to the COVID-19 PHE;
- a statement indicating whether the licensee would, for the duration of any exemption approved by the NRC, apply a licensee-specific process to manage personnel with overdue respiratory protection fit-tests, while ensuring the safety of its workers;
- an estimate of the number of personnel who would be covered by the exemption and their organizational positions, using generic position descriptions, that will be included in the licensee-specific process; and
- the date and time when the exemption would be implemented, if approved, and when the licensee-specific process would take effect.

In addition, the NRC can only ensure an expedited review of exemption requests from the medical evaluation and fit-testing requirements where the licensee-specific processes discussed above include a provision for informing workers of the general risks of wearing respiratory protection (e.g., information similar to that found in Appendix D of 29 CFR 1910.134), consistent

with the regulations in 10 CFR 20.1703(c). For fit-testing-related requests, the NRC would perform expedited reviews for those requests that do not include individuals with facial or other changes that could affect the fit of a respirator (e.g., information similar to that in RG 8.15, Section 5.3.5).

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Licensees should make every effort to submit timely exemption requests. Licensees should continue to follow 10 CFR 20.1007, "Communications," and 10 CFR 50.4, "Written communications," or for 10 CFR Part 30, Part 40, Part 70, or Part 72, licensees should follow 10 CFR 30.6, "Communications," 10 CFR 40.5, "Communications," 10 CFR 70.5, "Communications," or 10 CFR 72.4, "Communications," as appropriate. To ensure timely receipt and review of these exemption requests, licensees should also send an email with the request to their facility's NRC project manager, in addition to submitting the application as provided in NRC regulations.

Licensees should comply with the medical confidentiality provisions of the Americans with Disabilities Act and not include protected health information in any communication with the NRC.

Review Process

The NRC will consider these requests on a case-by-case basis and, if the requirements for an exemption are met, will provide a written decision. Based upon its review, the NRC staff may condition any exemption approval, as appropriate. If sufficient time is not available for the NRC to provide a prior written decision for the exemption, then the NRC may provide a verbal decision that will be followed promptly with a letter documenting the approval or denial of the request.

Duration of Exemptions

Exemptions that are approved under this process would be in effect until 90 days after the end of the PHE, or until December 31, 2020, whichever is sooner. Licensees must come back into compliance with the regulations or receive approval for an additional exemption period from the NRC before the end of each exemption period.

Alternative Approaches

This letter does not preclude requests for exemptions that take a different approach or present different rationales. The NRC will review such requests on a case-by-case basis.

If you have any further questions about the contents of this letter, please contact your facility's NRC project manager.

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Sincerely,

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Ho K. Nieh, Director
Office of Nuclear Reactor
Regulation

John W. Lubinski, Director
Office of Nuclear Material Safety
and Safeguards

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EMERGENCY DATED APRIL 27, 2020

Identical letters sent to:

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

Mr. Chris Bakken
Executive Vice President
Nuclear Operations & Chief Nuclear Officer
Entergy Nuclear
1340 Echelon Parkway
Jackson, MS 39213

Mr. Don Moul
Executive Vice President, Nuclear
Division and Chief Nuclear Officer
Florida Power & Light Company
Mail Stop: NT3/JW
15430 Endeavor Drive
Jupiter, FL 33478

Mr. Clive Townsend
Chair, National Organization of Test, Research,
and Training Reactors
1611 Lionheart Ln
West Lafayette, IN 47906

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Mr. Chris Bakken
Executive Vice President
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Entergy Nuclear
1340 Echelon Parkway
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Mr. Don Moul
Executive Vice President, Nuclear
Division and Chief Nuclear Officer
Florida Power & Light Company
Mail Stop: NT3/JW
15430 Endeavor Drive
Jupiter, FL 33478

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO THE RESPIRATORY PROTECTION REQUIREMENTS FOR ALL LICENSEES DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

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Mr. Clive Townsend
Chair, National Organization of Test, Research,
and Training Reactors
1611 Lionheart Ln
West Lafayette, IN 47906

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As you know, on January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the U.S. Nuclear Regulatory Commission (NRC), and its regulated entities. In all of our actions, we are committed to following the NRC's Principles of Good Regulation (independence, openness, efficiency, clarity, and reliability) while performing our mission. In keeping with our principles, this letter provides information regarding the NRC's planned actions related to the requirements contained in Title 10 of the *Code of Federal Regulations* (CFR) Part 20 for respiratory protection during the COVID-19 PHE. This information is applicable to all NRC licensees.

Under the NRC's regulations in 10 CFR 20.2301, "Applications for exemptions," "The Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not result in undue hazard to life or property." Consistent with this regulation and as described in this letter, the NRC is prepared to consider on an expedited basis requests for exemptions, upon request from individual licensees, from medical evaluation frequency and fit-testing frequency requirements that are specified in 10 CFR 20.1703(c)(5)(iii) and 10 CFR 20.1703(c)(6). These exemptions would, if granted, facilitate the licensee's implementation of these requirements in a manner that does not conflict with practices recommended by the Centers for Disease Control and Prevention (CDC) to limit the spread of COVID-19.¹ The NRC notes that the regulatory positions regarding respiratory protection-related medical evaluation and fit-testing frequencies in Regulatory Guide (RG) 8.15, Revision 1, "Acceptable Programs for Respiratory Protection" (Agencywide Documents Access and Management System Accession No. ML003739528) allow for the occasional application of 90-day grace periods from the due dates of these requirements. Licensees may take advantage of this flexibility without any additional action from the NRC. The exemption requests contemplated in this letter could, if

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

approved, allow licensees to go beyond the scope and duration of the grace periods contemplated in RG 8.15, Revision 1.

Requested Information

Medical Evaluations: To receive expedited review of exemption requests from 10 CFR 20.1703(c)(5)(iii), licensees should submit a request that contains the following information:

- a statement that the licensee cannot meet the medical evaluation requirements of 10 CFR 20.1703(c)(5)(iii) without workers taking actions that may be contrary to CDC's guidance for responding to the COVID-19 PHE;
- a statement indicating whether the licensee would, for the duration of any exemption approved by NRC, apply a licensee-specific process to manage personnel with overdue medical evaluations, while ensuring the safety of its workers;
- an estimate of the number of personnel who would be covered by the exemption and their organizational positions, using generic position descriptions, that will be included in the licensee-specific process;
- the date and time when the exemption would be implemented, if approved, and when the licensee-specific process would take effect;
- a statement indicating whether this exemption would only be used by personnel having known, stable medical histories as determined and documented by a licensed physician;
- a statement that, except for physical medical examinations at medical facilities, the licensee has completed, or will complete within the required frequency (plus a 90-day grace period), all applicable respiratory protection program medical evaluation requirements (e.g., medical history questionnaire); and
- a statement that a licensed physician has reviewed the medical history questionnaire prior to the expiration of the current medical evaluation (plus a 90-day grace period) and has determined and documented that an extension of the wearer's physical medical evaluation due date is acceptable such that the wearer remains qualified to use assigned respiratory protection equipment during the extension.

Fit-Testing Requirements: To receive expedited review of exemption requests from 10 CFR 20.1703(c)(6), licensees should submit a request that contains the following information:

- a statement that the licensee cannot meet the fit-testing requirements of 10 CFR 20.1703(c)(6) without workers taking actions that may be contrary to CDC guidance for responding to the COVID-19 PHE;
- a statement indicating whether the licensee would, for the duration of any exemption approved by the NRC, apply a licensee-specific process to manage personnel with overdue respiratory protection fit-tests, while ensuring the safety of its workers;
- an estimate of the number of personnel who would be covered by the exemption and their organizational positions, using generic position descriptions, that will be included in the licensee-specific process; and
- the date and time when the exemption would be implemented, if approved, and when the licensee-specific process would take effect.

In addition, the NRC can only ensure an expedited review of exemption requests from the medical evaluation and fit-testing requirements where the licensee-specific processes discussed above include a provision for informing workers of the general risks of wearing respiratory protection (e.g., information similar to that found in Appendix D of 29 CFR 1910.134), consistent

with the regulations in 10 CFR 20.1703(c). For fit-testing-related requests, the NRC would perform expedited reviews for those requests that do not include individuals with facial or other changes that could affect the fit of a respirator (e.g., information similar to that in RG 8.15, Section 5.3.5).

How to Submit Requests

Licensees should make every effort to submit timely exemption requests. Licensees should continue to follow 10 CFR 20.1007, "Communications," and 10 CFR 50.4, "Written communications," or for 10 CFR Part 30, Part 40, Part 70, or Part 72, licensees should follow 10 CFR 30.6, "Communications," 10 CFR 40.5, "Communications," 10 CFR 70.5, "Communications," or 10 CFR 72.4, "Communications," as appropriate. To ensure timely receipt and review of these exemption requests, licensees should also send an email with the request to their facility's NRC project manager, in addition to submitting the application as provided in NRC regulations.

Licensees should comply with the medical confidentiality provisions of the Americans with Disabilities Act and not include protected health information in any communication with the NRC.

Review Process

The NRC will consider these requests on a case-by-case basis and, if the requirements for an exemption are met, will provide a written decision. Based upon its review, the NRC staff may condition any exemption approval, as appropriate. If sufficient time is not available for the NRC to provide a prior written decision for the exemption, then the NRC may provide a verbal decision that will be followed promptly with a letter documenting the approval or denial of the request.

Duration of Exemptions

Exemptions that are approved under this process would be in effect until 90 days after the end of the PHE, or until December 31, 2020, whichever is sooner. Licensees must come back into compliance with the regulations or receive approval for an additional exemption period from the NRC before the end of each exemption period.

Alternative Approaches

This letter does not preclude requests for exemptions that take a different approach or present different rationales. The NRC will review such requests on a case-by-case basis.

If you have any further questions about the contents of this letter, please contact your facility's NRC project manager.

Paperwork Reduction Act Statement

This letter contains voluntary guidance for implementing the voluntary information collections covered by 10 CFR Part 20 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collections were approved by the Office of Management and Budget under control number 3150-0014. Estimated burden per response to

comply with this voluntary information collection request is 24 hours. Send comments regarding this information collection to the Information Services Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, or by e-mail to Infocollects.Resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0014) Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

Sincerely,

Sincerely,

Ho K. Nieh, Director
Office of Nuclear Reactor
Regulation

John W. Lubinski, Director
Office of Nuclear Material Safety
and Safeguards