



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

EDO AF

August 2, 1984

MEMORANDUM FOR: The Commission

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: THE APPLICABILITY OF THE COMMISSION'S SHOREHAM DECISION
ON EXEMPTIONS TO OTHER CASES

At the July 25, 1984 Commission meeting regarding SECY-84-290, Commissioner Asselstine suggested that the staff follow the Shoreham decision (CLI-84-8) for granting exemptions in all cases except those involving schedular exemptions for operating reactors (ORs). It was further suggested that, in applying the Shoreham standards, the "as safe as" standard should be interpreted to mean that operation with the exemption would be "substantially as safe, from an overall safety standpoint, as" operation with full compliance. In Commissioner Asselstine's memorandum to me dated July 30, 1984, he provided further guidance for the purpose of staff's short-term review of his proposal. Because of your request for a prompt response and the limited time we have had to consider Commissioner Asselstine's more detailed guidance, my comments are brief. We will, however, provide further views on the subject of exemptions in the more detailed discussion of this subject which the Commission has requested in the Staff Requirements Memorandum dated July 27, 1984 (M840725A).

The following are the staff's preliminary comments on the six items of Commissioner Asselstine's proposal:

1. The guidance in the Shoreham decision applies to all operating license applications, including fuel loading, low-power and full-power licenses.

Unnecessary paperwork relative to exemptions would be avoided if it were understood that some regulations, including some GDC, by their terms or by considering their purpose, do not apply to fuel loading and low-power testing. In this regard, the staff agrees with the OGC paper on exemptions, which states:

- (d) Some regulations, including some GDC, may properly be considered inapplicable to fuel loading and low-power testing if such a conclusion is fairly compelled by simple logic and common sense. However, a regulation cannot be considered inapplicable merely because, as applied to fuel loading or low-power testing, it is logical but arguably excessive.

8502270367 841109
PDR FOIA
BELL84-659 PDR

A-7

- (e) In considering a low-power license, under the regulations, there is no requirement that full-power operation be postulated. In determining regulation compliance, such factors as decreased temperatures and pressures can be factored into the analysis.

Memorandum for the Commission from Herzel H. E. Plaine, General Counsel, July 24, 1984.

- 2. For operating reactors, the Shoreham guidance applies to requests for long-term or life-of-plant relief from provisions of the Commission's regulations, but does not apply to requests for temporary relief from schedular requirements. These temporary schedular requests will be handled as enforcement matters rather than as exemptions.

For operating reactors, the proposal would distinguish between requests for temporary relief from schedular requirements (schedular relief) and requests for long-term/ or life-of-plant relief from provisions of the Commission's regulations (technical exemptions). A sufficient distinction may exist between these types of relief - temporary versus permanent - to permit a dual standard to withstand judicial scrutiny; however, the application of differing standards does raise a legal question. If a safety-related basis for the distinction were necessary to support it under judicial scrutiny, it may be very difficult to distinguish, on a substantive basis, between (i) the safety considerations involved in granting schedular relief - in which either the limited period of time alone or some compensating features were provided to assure adequate protection of public health and safety, and (ii) the safety considerations involved in granting a technical exemption - in which the intrinsic nature of the facility or compensating features provided for the lifetime of the facility are proffered as the basis for concluding that adequate protection of the public health and safety has been provided. Indeed, if the "substantially as safe as" standard, discussed below, were interpreted or intended to provide a significantly higher degree of safety assurance than "adequate protection of the public health and safety," then the standard for safety for technical exemptions would be higher than for schedular relief, and consequently would exceed the minimum level of protection provided by the Commission's regulations. This would make it very difficult to argue that there is a lawful and rational safety basis for the distinction between the two kinds of relief. In the absence of

1/ There is a question about the meaning of "long-term" vis-a-vis "life-of-plant." The staff believes it would be preferable if there were at most two mutually exclusive categories: Schedular relief and technical exemptions for life-of-plant relief.

such a rational safety basis, the application of different standards for the two types of relief may be held to be arbitrary and capricious.^{2/}

3. The Shoreham guidance applies to all provisions of the Commission's regulations, and not just to GDC 17 or the other General Design Criteria.

Ideally, whatever policy is adopted by the Commission, it should be applicable to any provisions of any Commission regulation, since it appears to be at least impracticable to try to define "classes" of regulations or provisions of regulations and to apply different standards or procedures to those different classes.

4. A showing of exigent circumstances is required in order to grant any exemption under 10 CFR section 50.12. The test for exigent circumstances involves the balancing of equities, as described in footnote 3 of the Commission's Shoreham order.
5. In all cases, the Commission regards the use of the exemption authority as extraordinary. This is consistent with the underlying principle that the Commission's regulations, which represent the Agency's fundamental judgment on what is required for safety, should be met unless there are compelling circumstances warranting an exemption.

The staff believes that the use of the exemption authority should be and has been exercised sparingly, as it understands the term "sparingly." Indeed, when the number, scope and complexity of the Commission's regulations are considered, it is clear that this principle is currently being followed by the staff.

We agree that there should be a requirement for a showing of exceptional circumstances or special circumstances or good cause, or other similar basis warranting a departure from regulations promulgated for general application. Because a showing of "exigent" circumstances, by definition, requires a showing of "immediate" need, its adoption would be excessively limiting. In our view only one of the other phrases should be chosen, preferably the "good cause" standard. Whatever language is chosen to describe the required showing, however, it is essential that it be well-defined. The balancing of equities test described in footnote 3 of the Commission's Shoreham Order is one satisfactory approach.

^{2/} The staff also has some reservations about the proposal to handle temporary scheduler requests as enforcement matters in that, inter alia, such a practice would place licensees in the unfortunate circumstance of first having to come into non-compliance with the Commission's regulations before any relief could be granted.

6. The "as safe as" standard in the Shoreham decision applies to all exemption requests under 10 CFR section 50.12. The "as safe as" standard should be read reasonably to mean "substantially as safe as." In applying the "as safe as" test, the staff should first determine whether it is feasible to provide compensating measures to assure a level of safety that is equivalent to that provided by plant operation in full compliance with the regulations. However, even if such compensating measures are not feasible, an exemption could still be granted, assuming all other requirements of the Shoreham decision are met, if the staff determines that operation of the plant with the exemption will not result in a substantial reduction in the level of safety that would be provided by plant operation in full compliance with the regulations. In making this determination, I would permit the staff to take into account the length of time during which the plant would be allowed to operate under the exemption.

One of our principal difficulties with the new "as safe as" standard (read reasonably to mean "substantially as safe as")^{3/} is understanding and articulating its meaning relative to "no undue risk," or "will not endanger life or property." Clarification of this point is crucial to the overall staff views on Commissioner Asselstine's proposal.

The staff's general practice in the past for granting exemptions has been to determine whether the standards of 10 C.F.R. § 50.12(a) ("authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest") have been satisfied. This determination was, in general, the result of qualitative engineering analysis of the purpose of the regulatory requirement and of the specific methods specified in the regulation required for achieving the regulatory purpose. The staff would then compare the proposed method of operation to assure that the regulatory purpose was in fact fulfilled and that the method to be used in a particular case was, under the particular circumstances before the staff, appropriate and technically sound as a method for accomplishing the regulatory purpose. In recent years when probabilistic quantitative assessment techniques have been available, these techniques, along with engineering judgment, have been used to assure that the exemption involved was acceptable from a safety standpoint.

One possible interpretation of the newly proposed "as safe as" standard is that it is equivalent to those currently used by the staff in processing applications for exemptions, as discussed above. However, this would seem to be inconsistent with what appears to be Commissioner Asselstine's objective - a substantial change in the current exemption process and the number of exemptions granted. But even if use of the new standard, because

^{3/} The meaning of these new terms relative to "equivalent" level of safety, also used in item 6, also is not completely clear.

of a more stringent interpretation of its meaning, results in as many as 10% of previously accepted exemptions being denied, this likewise would not achieve that objective. Beyond this, use of any new standard would inevitably result in much additional paperwork for both the industry and the staff. In our view, such costs should not be incurred unless significant improvements in our current process would result.

As noted above, clarification of the meaning of the new standard, but more importantly the objective that Commissioner Asselstine seeks to accomplish, is crucial to meaningful comment on his proposal. We are continuing our review of the proposal so that we will be in a better position to contribute to the paper on the subject of exemptions which the Commission has requested be developed.

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

cc: SECY
OPE
OGC

Distribution

WDircks
EDO R/F
GCunningham
JGoldberg
EChristenbury
ECase
HDenton
RDeYoung
Rehm
Roe
Stello
ED 14673

Telephone conversation

FC	:OELD <i>WJ</i>	:OELD <i>EC</i>	:ELD <i>WJ</i>	:NRR <i>WJ</i>	:EDO <i>WJ</i>	:	:
AME	:JGoldberg:pl	:EChristenbury	:GCunningham	:ECase	:WDircks	:	: : :
ATE	:8/ / 1984	:8/ 1 /84	:8/ 1 /84	:8/ 1 /84	:8/ 2 /84	:	:

FOR: The Commissioners

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: PROPOSED AMENDMENTS TO 10 CFR § 50.12, "SPECIFIC EXEMPTIONS"

PURPOSE: To obtain Commission approval to publish proposed revisions to the criteria set forth in 10 CFR § 50.12 for granting exemptions from the requirements of 10 CFR Part 50.

CATEGORY: Major policy question.

ISSUE: What revisions should be made to Commission regulations in order to clarify and strengthen the Commission's policy and practice in regard to exemptions from the requirements of 10 CFR Part 50?

DISCUSSION: The enclosed Federal Register Notice was prepared in response to the Commission's July 27, 1984 request for a re-examination of the exemption process. This request was prompted by the Commission's recent Shoreham decision, CLI-84-8, and the consequent Commission concerns over the need for a comprehensive, consistent, appropriate, and practicable exemption policy. Based on an evaluation of past staff practice in the area of exemptions and the Commission's concerns as evidenced in Shoreham and related discussions, the staff has developed a proposed revision to the exemption criteria of 10 CFR § 50.12(a). The proposed revision is based on existing practice and policy, but it also provides a clarification of existing practice, as well as additional criteria to ensure that exemptions are granted in a judicious and discriminating manner.

Contact: F.X. Cameron, OELD
492-8689

The staff has forwarded these recommendations to the Commission in the form of a proposed rule. Another option available to the Commission would be to issue a Policy Statement containing any recommended clarification and guidance on the exemption process. Although the advantages are not overwhelming, the staff believes that rulemaking would be the more appropriate approach to formalize any substantive revisions to the exemption process which narrow and focus staff discretion in granting exemptions.

10 CFR § 50.12(a) of the Commission's regulations provides that the Commission may grant exemptions from 10 CFR Part 50 as it determines are:

"authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

In reviewing Section 50.12(a) requests for exemptions, the focus of the NRC staff has been on whether any undue risk would result from the granting of a particular exemption. This determination was, in general, the result of a qualitative engineering analysis of the purpose of the regulatory requirement and of the specific methods specified in the regulation for achieving the regulatory purpose. The staff would then compare the proposed method of operation to ensure that the regulatory purpose was satisfied and that the method to be used in a particular case was, under the particular circumstances before the staff, appropriate and technically sound as a method for accomplishing the regulatory purpose. In recent years, when probabilistic quantitative assessment techniques have been available, these techniques, along with engineering judgement, have been used to ensure that the exemption involved was acceptable from a safety standpoint. In summary, the staff would evaluate an exemption request to determine if there was a justifiable reason for the proposed exemption and, in addition, whether adequate protection of the public health and safety would be maintained if the exemption were granted. As part of the review conducted in response to the Commission's request for a re-examination of exemption practice, to the staff's knowledge, there has been no instance where an exemption has later resulted in a safety problem.

The Commission's recent decision in Shoreham represented an apparent departure from past staff practice in the exemption area. In Shoreham, the Commission examined the applicability of General Design Criteria (GDC) 17 to fuel loading and low power operation. The Commission found that GDC 17 does apply

to such operations below full power and that an exemption from GDC 17 must be granted if Shoreham is to be licensed for fuel loading or low power operation prior to compliance with GDC 17. In addition, for an exemption to be issued under 10 CFR § 50.12, the Applicant should include a discussion of:

1. The 'exigent circumstances' that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.
2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it as operation would have been with a fully qualified onsite A/C power source.

In the context of exemptions related to plant operations, these determinations regarding "exigent circumstances" and "as safe as" are not explicitly stated in 10 CFR § 50.12(a). The Commission later specified that for the near term, the staff should read Shoreham as applying to Shoreham only. For the longer term, the Commission requested a re-examination of the exemption process, the product of which is represented by the enclosed rulemaking.

The proposed rule is based on the existing exemption criteria and on existing staff practice in applying these criteria. Under proposed Section 50.12(a)(1), the Commission may grant exemptions which:

"are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and are in the public interest."

As in the existing rule, an exemption must be "authorized by law." Apart from the very fact of granting the exemption relief itself, the granting of the exemption cannot be in violation of other applicable laws, such as the Atomic Energy Act, or the National Environmental Policy Act.

In a departure from the text of the existing rule, the proposed rule would require a finding that the exemption will not "present an undue risk to the public health and safety" and would be "consistent with the common defense and security." These criteria provide an explicit recognition of traditional staff practice in evaluating the safety

implications of a particular exemption. The staff has not recommended the adoption of a finding that the plant be "as safe as" or "substantially as safe as" with the exemption as it would be without it. The staff believes that such a deviation from the traditional "no undue risk" approach would result in the difficulties and uncertainties associated with applying a new, and largely undefined, standard. Moreover, the need to make the "as safe as" finding before granting exemptions which encompass reactor operation at low power or above would likely result in the denial of some exemptions which would present no undue risk to the public health and safety. As noted earlier, to the staff's knowledge, there has been no instance where the application of the "no undue risk" standard has later resulted in a safety problem.

As is currently required by Section 50.12(a), the proposed rule would also require that the exemption be in the "public interest." However, in recognition of the Commission's decision in Shoreham, the public interest determination will consist of the consideration of the special circumstances that justify the exemption. Apart from those related conditions set forth in proposed Section 50.12(a)(2), discussed infra, that constitute specific applications of "special circumstances," this determination would be confined to a consideration of the equities of the situation, similar to those cited in the Shoreham decision, including the stage of the facility's life, any financial or economic hardships, any unusual difficulties in complying with the regulation, any internal inconsistencies in the regulation, the applicant's good faith effort to comply with the regulation from which the exemption is sought, the public interest in adherence to the Commission's regulations, and the safety issues involved.

In addition to the general standards of proposed Section 50.12(a)(1), the proposed rule includes a new Section 50.12(a)(2), which would require that one of several conditions exist before an exemption could be granted. These conditions represent situations in which it would be reasonable to grant an exemption, provided that the general standards of section 50.12(a)(1) are met. These conditions were selected on the basis of exemption criteria that have been noted by the courts with approval (special circumstances, hardship, equity, more effective implementation of overall policy, circumstances substantially different from those considered in the rulemaking proceeding) and on the basis of examples from past Commission exemption practice where the circumstances underlying the exemption appeared to be relevant and appropriate for exemption relief. The conditions in proposed 50.12(a)(2) constitute a specific application of

either the safety criterion or the public interest (special circumstances) criterion stated in the general standards of proposed Section 50.12(a)(1). Although an exemption request may satisfy one of the conditions in proposed Section 50.12(a)(2), the general criteria in proposed Section 50.12(a)(1) must also be satisfied. For example, proposed Section 50.12(a)(2)(iii) establishes a condition that "alternative or compensatory means exist to achieve the underlying purpose of the rule." Although the exemption request may satisfy this condition, it must also satisfy the public interest (special circumstances) criterion of proposed Section 50.12(a)(1) to justify the granting of the exemption. The objective in establishing the conditions of Section 50.12(a)(2) is to impose limits on the type of exemption requests that can be granted. The addition of the Section 50.12(a)(2) is intended to reaffirm and strengthen the existing NRC policy and practice of evaluating and granting exemptions in a judicious and discriminating manner.

Proposed Section 50.12(a)(2) would require that one of the following be satisfied before an exemption could be granted:

- Application of the regulation in the particular circumstances would be in conflict with other rules of the Commission; or
- 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
- Alternative or compensatory means exist to achieve the underlying purpose of the regulation; or
- The exemptions would result in an overall benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or
- Application of the regulation would result in treatment of the particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees; or
- The exemption would provide only temporary relief from the applicable regulation; or
- Application of the regulation in the particular circumstances would be unfair.

Proposed Section 50.12(a)(2)(i) would address those situations where application of a regulation in a particular circumstance would be in conflict with other rules or the Commission. This provision is designed for those rare situations where an applicant or licensee would be in the anomalous position of satisfying two or more conflicting requirements.

Proposed Section 50.12(a)(2)(ii) would address those situations where application of the regulations in the particular circumstances is not necessary to achieve, or would not serve, the underlying purpose of the rule. This would include those situations considered in requests for exemptions under 10 CFR 2.758(b), where circumstances peculiar to that case, as opposed to any alleged generic inadequacy of the regulation, may result in the frustration of the underlying purpose of the rule.

Proposed Section 50.12(a)(2)(iii) addresses situations where alternative or compensatory means exist to achieve the underlying purpose of the regulation. This would allow an exemption request to be considered where it could be shown that satisfactory alternative or compensatory mechanisms exist to achieve the regulatory objective.

Proposed Section 50.12(a)(2)(iv) would address situations where the exemption would result in an overall benefit to health and safety. This provision would focus on those circumstances where, on balance, the exemption would actually result in a net increase in overall safety or quality of plant operations.

Proposed Section 50.12(a)(2)(v) would address those situations where the application of the regulation would result in treating a particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees. This is intended to provide equitable treatment to applicants or licensee who, because of some unusual circumstance, are affected in a manner different than that of other similarly situated licensees or applicants.

Proposed Section 50.12(a)(2)(vi) establishes a condition where the exemption would provide only temporary relief from the applicable regulation. This would cover the so-called "schedular" exemptions where the relief sought is limited to a specific amount of time or until a specific event occurs. Historically, this has been ten years or less.

Proposed Section 50.12(a)(2)(vii) establishes a category where the application of the regulation in the particular

circumstances would be unfair. Although the Staff believes that the conditions in proposed Section 50.12(a)(2)(i) through (vi) will cover most requests in which an exemption could reasonably be granted, proposed Section 50.12(a)(2)(vii) recognizes that there may be circumstances, which could not have been foreseen in developing the conditions in proposed Section 50.12(a)(2)(i) through (vi), in which it would be unfair not to provide relief from the regulations. In these cases, after documentation of the circumstances that could reasonably be viewed as unfair, and meeting the general criteria, including "no undue risk, in proposed Section 50.12(a)(1), an exemption could issue.

The proposed rule involves no new substantial resource requirements.

Recommendation: That the Commission:

1. Approve publication in the Federal Register of a notice of proposed rulemaking amending 10 CFR 50.12(a). (Enclosure A).
2. Certify that the proposed rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This certification is necessary in order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b); and
3. Note that
 - (a) The notice of proposed rulemaking in Enclosure A will be published in the Federal Register allowing 30 days for public comment.
 - (b) The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act.
 - (c) The proposed rule contains no new or amended requirements for record keeping, reporting, plans or procedures, applications, or any other type of information collection reviewable by the Office of Management and Budget under the Paperwork Reduction Act.
 - (d) Pursuant to 10 CFR 50.32 a finding of no significant environmental impact has been made in connection with this rulemaking.

- (e) A regulatory analysis was prepared on the proposed rule (Enclosure B).
- (f) The Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works, the Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee, and the Subcommittee on Energy Conservation and Power of the House Energy and Commerce Committee will be informed of the rulemaking by letter (Enclosure C).
- (g) The Office of General Counsel has reviewed, and commented on, this proposal.

SCHEDULING: No specific circumstance would require action by any particular date.

William J. Dircks
Executive Director for Operations

Enclosures:

- A. Draft Federal Register Notice
- B. Regulatory Analysis
- C. Draft Congressional Letter

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Specific Exemptions

AGENCY: Nuclear Regulatory Commission

ACTION: Proposed Rule

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to clarify the standards that will be applied when it considers whether to grant exemptions from the regulatory requirements codified in 10 CFR Part 50.

DATE: Comment period expires 30 days from the publication of this notice in the Federal Register. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before _____.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: F.X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-492-8689.

SUPPLEMENTARY INFORMATION:

I. Background

Section 50.12 of Chapter 1, Title 10 of the Code of Federal Regulations provides that the Commission may grant exemptions from the regulations in Part 50 that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Traditionally, this authority has been delegated by the Commission to its staff which determines whether exemptions are needed and justified. The Commission believes that it is not possible for its regulations to predict and accommodate every conceivable circumstance. Consequently, it has historically provided mechanisms to grant exemptions or waivers where application of the regulation would not serve the public interest and no undue risk to the public health and safety would occur as a result of not requiring literal adherence to a particular requirement.

In several recent adjudicatory proceedings reviewed by the Commission, it has become evident that it would be desirable to attempt to state clearly the circumstances where the Commission believes that exemptions are

warranted for the guidance of applicants, licensees, the staff and the public.

The Commission wishes to emphasize that it expects the intent of its regulations to be met and normally this requires conforming to the regulations as stated. The Commission recognizes, however, that there are circumstances where on balance it would not be equitable or in the public interest to require literal adherence to regulations particularly where to so require would not result in an improvement in overall safety or a reduction in risk to the public. The objective of the proposed rule is to identify the criteria to apply in such circumstances and to provide a means for considering the equities so that consistent regulatory decisions can be made concerning exemptions to Commission regulations.

The authority of an administrative agency to provide for exemptions from its regulations is well-established.^{1/} In U.S. v. Allegheny - Ludlum Steel Corp., Justice Rehnquist stated that:

It is well established that an agency's authority to proceed in a complex area ... by means of rules of general application entails a concomitant authority to provide exemptions procedures in order to allow for special circumstances 406 U.S. 742, 755 (1972).

^{1/} See, Allegheny-Ludlum Steel Corp. v. U.S., 406 U.S. 742, 755 (1972). WAT Radio v. FCC, 418 F.2d 1153, (D.C. Cir. 1969); Gulf Oil Corp. v. Hickey, 435 F.2d 440, 447 (D.C. Cir. 1970); Industrial Broadcasting Co. v. FCC, 437 F.2d 680, 683 (D.C. Cir. 1970); Basic Media Ltd. v. FCC, 559 F.2d 830 (D.C. Cir. 1977).

However, judicial decisions also reject the approach of granting exemptions indiscriminately. As described by Judge Leventhal in WAIT Radio v. FCC:

The agency may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function. 418 F.2d 1153, 1157 (D.C. Cir. 1969). See also, Basic Media Ltd., v. FCC, 559 F.2d 830, 833. (D.C. Cir. 1977); Mary Carter Paint Co. v. FTC, 333 F.2d 654, 660 (5th Cir. 1964) (concurring opinion).

The courts have cited several permissible rationales for the granting of exemptions. In U.S. v. Allegheny - Ludlum Steel Corp., *supra*, the Supreme Court cited "special circumstances" as a rationale for granting exemptions. In WAIT Radio, the D.C. Circuit believed that an exemption or waiver provision might account for considerations of "hardship, equity, or more effective implementation of overall policy." *Supra*, at 1159. In Basic Media, *supra*, the D.C. Circuit stated that any rule of general applicability will involve particular cases of hardship for which an agency would grant an exemption. Similarly, in Gulf Oil Corp. v. Hickel, 435 F.2d 440 (D.C. Circuit 1970), the court found that a provision for adjustment in cases of extreme hardship is a meaningful component of a regulatory scheme. Another rationale was provided in Industrial Broadcasting Co., v. FCC, 437 F.2d 680 (D.C. Cir. 1970) where the court held that the desired flexibility in the regulatory process is maintained by requiring the agency to take a hard look at novel proposals, i.e., where the person seeking a waiver can demonstrate that his or her circumstances are substantially different from those which

have been carefully considered in the rulemaking proceeding from which an exemption is desired.

In conformance with the principle that a means of granting relief from regulations should be provided, 10 CFR 50.12(a) of the Commission regulations provides that:

(a) The Commission may, upon application by any interested person or upon its own initiative grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. To obtain an exemption to Appendices G and H to this part, the requirements of paragraph 50.60(b) of this part must be met in addition to the requirements of this paragraph.

At this point, it should be noted that 10 CFR 50.12(b) establishes a separate exemption procedure to permit the carrying out of construction activities, normally prohibited by 10 CFR 50.10, prior to the issuance of a

construction permit.^{2/} The § 50.12(b) procedures are not of concern here and are left undisturbed by this proposed rulemaking.

In reviewing Section 50.12(a) requests for exemptions, the focus of the NRC staff ("staff") has been on whether any undue risk would result from the granting of a particular exemption. This determination was, in general, the result of a qualitative engineering analysis of the purpose of the regulatory requirement and of the specific methods specified in the regulation for achieving the regulatory purpose. The staff would then compare the proposed method of operation to ensure that the regulatory purpose was satisfied and that the method to be used in a particular case was, under the particular circumstances before the staff, appropriate and technically sound as a method for accomplishing the regulatory purpose. In recent years when probabilistic quantitative assessment techniques have been available, these techniques, along with engineering judgement, have been used to ensure that the exemption involved was acceptable from a safety standpoint. In summary, the staff would evaluate an exemption request to

^{2/} For a thorough discussion of the application of 10 CFR 50.12(b), see, In the Matter of United States Department of Energy, Project Management Corporation, Tennessee Valley Authority (Clinch River Breeder Reactor Plant) CLI-83-1, 17 NRC 1 (1983). Note that 10 CFR 2.758(b) of the Commission's regulations allows a party to an adjudicatory proceeding involving an initial licensing decision to petition for a waiver or exemption from the application of a Commission regulation. The sole ground for such a waiver is that special circumstances in the particular proceeding are such that application of the regulation would not serve the purposes for which the regulation was adopted. Section 2.758(b) is also unaffected by this proposed rulemaking.

determine if there was a justifiable reason for the proposed exemption and, in addition, whether adequate protection of the public health and safety would be maintained if the exemption were granted.

In addition, the staff viewed the Commission's regulatory framework as containing a reasonable amount of flexibility, with various requirements applicable only for certain modes of operation, and operation at certain times and power levels. For a typical power reactor under operating license review, the staff normally would recognize that, while the plant was ready for low power operation, power ascension or even initial full power operation, the plant might not fully comply with each and every NRC regulation. In these circumstances, "non-compliances" typically were dealt with by license conditions requiring completion of installation, testing, or further analyses before a particular power level ("Prior to exceeding 5% power . . .") or by a particular time ("By the first refueling outage . . ."). The effect on safety of such temporary "non-compliances" was evaluated by the Staff and discussed and justified in the Staff safety evaluation report or supplement thereto. In situations where the noncompliances would be corrected in a relatively short time and did not prevent a finding of adequate safety, the staff would condition the operating license so as to mandate that the requirements be met at a later time or before a particular power level rather than expressly consider or grant an exemption from the regulations for the period of operation prior to reaching the time or power level at which

the deficiency was to be corrected. In issuing operating licenses, the staff only considered and explicitly granted exemptions in instances of long-term or permanent non-compliance with the regulations and where, of course, the staff could find that the standards for granting an exemption in 10 CFR § 50.12(a) were satisfied.

The Commission's recent decision on an exemption request for the Shoreham nuclear power plant,^{3/} represented an apparent departure from past staff practice in the exemption area. In Shoreham, the Commission examined the applicability of General Design Criteria (GDC) 17 to fuel loading and low power operation. The Commission found that GDC 17 does apply to such operations below full power and that an exemption from GDC 17 must be granted if Shoreham is to be licensed for fuel loading or low power operation prior to compliance with GDC 17. In addition, for an exemption to be issued under 10 CFR § 50.12 the Applicant should include a discussion of:

1. The 'exigent circumstances' that favor the granting of an exemption under 10 CFR 50.12(a) should it be able to demonstrate that, in spite of its noncompliance with GDC 17, the health and safety of the public would be protected.
2. Its basis for concluding that, at the power levels for which it seeks authorization to operate, operation would be as safe under the conditions proposed by it, as operation would have been with a fully qualified onsite A/C power source.

^{3/} In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, slip op., (May 16, 1984) (hereinafter "Shoreham").

In the context of exemptions related to plant operations, these determinations regarding "exigent circumstances" and "as safe as" are not explicitly stated in 10 CFR § 50.12(a). Although the Commission later specified that Shoreham was only to apply to the particular circumstances of that case, the decision did underscore the need to review existing Commission practice in the exemption area. The proposed rule is an attempt to fashion a comprehensive, consistent, practicable, and appropriate framework for reviewing exemption requests, based on past staff practice and on the Commission's concerns, as evidenced in the Shoreham decision and related discussions.

II. The Proposed Rule

The proposed rule retains the existing criteria of section 50.12(a) in a slightly modified form, as general standards for the granting of exemptions. Under proposed Section 50.12(a)(1), the Commission may grant exemptions which:

"are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and are in the public interest."

As in the existing rule, an exemption must be "authorized by law." Apart from the very fact of granting the exemption relief itself, the granting of the exemption cannot be in violation of other applicable laws, such as the Atomic Energy Act, or the National Environmental Policy Act.

In a departure from the text of the existing rule, the proposed rule would require a finding that the exemption will not "present an undue risk to the public health and safety" and would be "consistent with the common

defense and security." These criteria provide an explicit recognition of traditional staff practice in evaluating the safety implications of a particular exemption. It is anticipated that this evaluation will consider such factors as compensatory measures, length of time that the exemption will be in effect, and stage of plant operation (i.e., fuel loading, low power, full power, etc.).

As is currently required by Section 50.12(a), the proposed rule would also require that the exemption be in the "public interest." However, in recognition of the Commission's decision in Shoreham, supra, the Commission wishes to explicitly state that the public interest determination will consist of a consideration of the special circumstances that justify the exemption. Apart from those related conditions set forth in proposed Section 50.12(a)(2), discussed infra, that are specific applications of "special circumstances," this determination would be confined to the consideration of the equities of the situation, similar to those cited in the Shoreham decision, including the stage of the facility's life, any financial or economic hardships, any unusual difficulties in complying with the regulation, any internal inconsistencies in the regulation, the applicant's good faith effort to comply with the regulation from which the exemption is sought, the public interest in adherence to the Commission's regulations, and the safety issues involved.

The Commission notes that because the criteria in proposed Section 50.12(a)(1) will now include consideration of hardships or unusual difficulties, as well as the level of safety, it is deleting the provision from existing Section 50.12(a) on additional requirements for exemptions from the fracture toughness requirements of 10 CFR Part 50, Appendices G and H. A corresponding deletion

has been made to 10 CFR 50.60.(b).

In addition to the general standards of proposed Section 50.12(a)(1) the Commission is proposing to add a new Section 50.12(a)(2), which would require that one of several conditions exist before an exemption could be granted. The Commission believes that these conditions represent situations in which it would be reasonable to grant an exemption, provided that the general standards of Section 50.12(a)(1) are also met. These conditions were selected on the basis of exemption criteria that have been noted by the courts with approval (special circumstances, hardship, equity, more effective implementation of overall policy, circumstances substantially different from those considered in the rulemaking proceeding) and on the basis of examples from past Commission exemption practice where the circumstances underlying the exemption appeared to be relevant and appropriate for exemption relief. ^{4/} The Commission would emphasize that the conditions in proposed Section 50.12(a)(2) constitute a specific application of either the safety criterion or the public interest (special circumstances) criterion stated in the general standards of proposed Section 50.12(a)(1). Although an exemption request may satisfy one of the

^{4/} As noted by the D.C. Circuit in WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969):

Sound administrative procedures contemplates waivers, or exemptions granted only pursuant to a relevant standard ... best expressed in a rule that obviates discriminatory approaches.... The process viewed as a whole leads to a general rule, and limited waivers or exemptions granted pursuant to an appropriate general standard.

conditions in proposed Section 50.12(a)(2), the general criteria in proposed Section 50.12(a)(1) must also be satisfied. For example, proposed Section 50.12(a)(2)(iii) establishes a condition that "alternative or compensatory means exist to achieve the underlying purpose of the rule." Although the exemption request may satisfy this condition, it must also satisfy the public interest (special circumstances) criterion of proposed Section 50.12(a)(1) to justify the granting of the exemption. The Commission's objective in establishing the conditions of Section 50.12(a)(2) is to impose limits on the type of exemption requests that can be granted. The addition of Section 50.12(a)(2) is intended to reaffirm and strengthen the existing NRC policy and practice of evaluating and granting exemptions in a judicious and discriminating manner.

Proposed Section 50.12(a)(2) would require that one of the following be satisfied before an exemption could be granted:

- Application of the regulation in the particular circumstances would be in conflict with other rules of the Commission; or
- 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
- alternative or compensatory means exist to achieve the underlying purpose of the regulation;
- The exemptions would result in an overall benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

- ° Application of the regulation would result in treatment of the particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees; or
- ° The exemption would provide only temporary relief from the applicable regulation; or
- ° Application of the regulation in the particular circumstances would be unfair.

Proposed Section 50.12(a)(2)(i) would address those situations where application of a regulation in a particular circumstance would be in conflict with other rules or the Commission. This provision is designed for those rare situations where an applicant or licensee would be in the anomalous position of satisfying two or more conflicting requirements.

Proposed Section 50.12(a)(2)(ii) would address those situations where application of the regulations in the particular circumstances is not necessary to achieve, or would not serve, the underlying purpose of the rule. This would include those situations considered in requests for exemptions under 10 CFR 2.758(b), where circumstances peculiar to that case, as opposed to any alleged generic inadequacy of the regulation, may result in the frustration of the the underlying purpose of the rule. For example, see, In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55 (1981); In the Matter of Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 NRC 674 (1980); In the Matter of Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-79-9, 2 NRC 180 (1985).

Proposed Section 50.12(a)(2)(iii) addresses situations where alternative or compensatory means exist to achieve the underlying purpose of the regulation. This would allow an exemption request to be considered where it could be shown that satisfactory alternative or compensatory mechanisms exist to achieve the regulatory objective.

Proposed Section 50.12(a)(2)(iv) would address situations where the exemption would result in an overall benefit to health and safety. This provision would focus on those circumstances where, on balance, the exemption would actually result in a net increase in overall safety or quality of plant operations.

Proposed Section 50.12(a)(2)(v) would address those situations where the application of the regulation would result in treating a particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees. This is intended to provide equitable treatment to applicants or licensee who, because of some unusual circumstance, are affected in a manner different than that of other similarly situated licensees or applicants. For example, see In the Matter of Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-79-9, 2 NRC 180 (1975).

Proposed Section 50.12(a)(2)(vi) establishes a condition where the exemption would provide only temporary relief from the applicable regulation. This would cover the so-called "schedular" exemptions where the

relief sought is limited to a specific amount of time or until a specific event occurs. Historically, this has been ten years or less.

Proposed Section 50.12(a)(2)(vii) establishes a category where the application of the regulation in the particular circumstances would be unfair. Although the Commission believes that the conditions in proposed Section 50.12(a)(2)(i) through (vi) will cover most requests in which an exemption could reasonably be granted, proposed Section 50.12(a)(2)(vii) recognizes that there may be circumstances, which could not have been foreseen in developing the conditions in proposed Section 50.12(a)(2)(i) through (vi), in which it would be unfair not to provide relief from the regulations. In these cases, after documentation of the circumstances that could reasonably be viewed as unfair, and meeting the general criteria, including "no undue risk, in proposed Section 50.12(a)(1), an exemption could issue.

The Commission would once again emphasize that although one of the above provisions of proposed section 50.12(a)(2) may be satisfied, the exemption request must still be evaluated in the overall context of the general standards in Section 50.12(a)(1). It is conceivable that one of the conditions in Section 50.12(a)(2) will be satisfied, but the general standards of Section 50.12(a)(1) cannot be met.

In terms of procedure, the Commission intends for public notice on exemptions to be provided through two mechanisms. For exemptions related to

ongoing licensing actions, notice will be encompassed by the prior public notice of the overall action involving the proposed issuance of the license or license amendment. For those exemption requests that do not involve an ongoing licensing action, the Commission will provide as much advance notice as is practicable. However, in cases where immediate action is necessary to prevent the shutdown or derating of the reactor, no advance notice may be provided at all.

The Commission expects the staff to utilize existing staff practice, pre-Shoreham, in evaluating exemptions, pending the effective date of this rulemaking.

FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment. The proposed rule modifies the criteria for the consideration of exemption requests under 10 CFR Part 50. The adoption of such criteria does not have an environmental effect in and of itself. The potential environmental impact of a specific exemption will be evaluated at that time, as appropriate.

PAPERWORK REDUCTION ACT

This proposed rule does not contain a new or amended information collection requirement subject to Paperwork Reduction Act of 1980 (44 U.S.C.

3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

REGULATORY ANALYSIS

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from: F.X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Telephone: 301-492-8689.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

REGULATORY FLEXIBILITY CERTIFICATION

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule primarily affects commercial power reactor licensees and license applicants, none of whom constitute a "small entity."

LIST OF SUBJECTS IN 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50 - DOMESTIC LICENSING OF PRODUCTION
AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1246 as amended (42 U.S.C. 5841, 5842, 5846) unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2952 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.76 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152), Section 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.12, paragraph (a) is revised to read as follows:

Section 50.12 Specific Exemptions

(a) The Commission may, upon application by any interested person or upon its own initiative grant such exemptions from the requirements of the regulations of this part, which --

(1) Are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, are in the public interest, and

(2) Meet one of the following --

(i) Application of the regulation in the particular circumstances would be in conflict with other rules of the Commission; or

(ii) 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

(iii) Alternative or compensatory means exist to achieve the underlying purpose of the regulation; or

(iv) The exemptions would result in an overall benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(v) Application of the regulation would result in treatment of the particular applicant or licensee in a manner substantially different than other similarly situated applicants or licensees; or

(vi) The exemption would provide only temporary relief from the applicable regulation; or

(vii) Application of the regulation in the particular circumstances would be unfair.

* * * * *

3. In section 50.60, paragraph (b) is revised to read as follows:
§ 50.60 Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation.

* * * * *

(b) Proposed alternatives to the described requirements in Appendices G and H of this part or portions thereof may be used when an exemption is granted by the Commission under § 50.12.

Dated at Bethesda, Maryland
this ____ day of _____, 1984.

NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk
Secretary of the Commission

REGULATORY ANALYSIS
10 CFR 50.12
"Specific Exemptions"

1. Statement of the Problem

As a result of the Commission's decision in Shoreham, CLI-84-8, the Commission directed the staff to re-examine the exemption criteria in 10 CFR 50.12, as well as the staff application of these criteria.

2. Objective

The objective of the re-examination was to determine what, if any, revisions were necessary to the existing exemption criteria to satisfy the Commission's desire to ensure that exemption policy and practice was comprehensive, consistent, appropriate, and practicable.

3. Alternatives

3.1. Status quo - This alternative would leave the existing Section 50.12 exemption criteria intact.

3.2. Shoreham - This alternative would revise the Section 50.12 exemption criteria to reflect the "exigent circumstances" and "as safe as" standards of Shoreham.

3.3. Revision based on past practice - This alternative would revise Section 50.12 using the existing criteria and practice as a base, but with additional modifications to reflect the Commission's concerns, as evidenced in Shoreham and related discussions.

4. Consequences

4.1 Status quo - Selection of this alternative would result in avoiding the expenditure of staff resources in promulgating revised criteria and in avoiding any additional costs that would result from applying the revised criteria to specific exemption requests. Likewise, it would avoid any additional costs that the industry or other parties might incur in demonstrating how the revised criteria have been met in a specific circumstance. Although, to the staff's knowledge, no safety problems have resulted from the application of the existing criteria, the Shoreham decision highlighted the need to clarify Commission policy and practice and to strengthen the existing criteria where necessary. Maintaining the status quo would prevent the realization of these benefits.

4.2 Shoreham

Although the alternative of revising Section 50.12 to reflect the Shoreham decision would have the benefit of specifying detailed exemption criteria, difficulties and uncertainty would arise in applying criteria that represent a departure from past exemption

practice. One of the principal difficulties with the "as safe as" standard would be understanding and articulating its meaning, particularly in relation to the existing standards of "no undue risk" and "will not endanger life or property." Moreover, the need to make the "as safe as" finding before granting exemptions which encompass reactor operation at low power or above would likely result in the denial of some exemptions which would present no undue risk to the public health and safety. In addition, because a showing of "exigent circumstances", by definition, requires a showing of "immediate need", its adoption would be excessively limiting. The Shoreham standards would result in significant administrative costs to the staff and the industry, without any substantial improvements in the current exemption process.

4.3 Revision based on past practice - This alternative would have the benefit of clarifying Commission policy and practice in the exemption area, and strengthening the exemption process by providing additional criteria that must be met before an exemption can be granted. However, because it is based on the existing criteria and existing staff practice, any problems in interpreting the new criteria, and associated staff and industry costs, will be minimized.

5. Decision Rationale - Alternative 4.3 was selected as the most cost-effective method of achieving the regulatory objective.

DRAFT CONGRESSIONAL LETTER

Dear _____

Enclosed for your information are a copy of a notice of proposed rulemaking to be published in the Federal Register and a public announcement concerning that rulemaking. The proposed rule would revise the Commission's criteria for granting exemptions from the requirements of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." Several recent adjudicatory proceedings reviewed by the Commission have highlighted the desirability of clarifying the circumstances where the Commission believes that exemptions are warranted.

Under the proposed rule, the Commission may grant exemptions which:

"Are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and are in the public interest."

In addition to these general standards, the proposed rule would require that one of several conditions exist before an exemption could be granted. These conditions represent situations in which it would be reasonable to grant an exemption, provided that the general standards are also met.

Sincerely,

Guy H. Cunningham, III
Executive Legal Director

Enclosure:
As stated

cc:

From 12-30-83 To 1-17-84

Regulation	Total	Of the Total Issued	
		Schedular	Technical
Fire Protection (50.48 and App. R)	26	7	19
Emergency Planning (Appendix E)	18		18*
Equipment Qualification (50.49)	11	11	0
RCS Vents (50.44 (c)(3)(iii))	5	5	0
RO/SRO Staffing (50.54(m)(2))	8	6	2
Appendix J	5	0	5
ASME Code	3	2	1
Hydrogen Recombiner (50.44(c)(3)(iii))	1	1	0
FSAR Update (50.71(e))	1	1	0
Physical Security, Guard Training & Qualification, and Safeguards	1	0	1
TOTAL	79	33	46

NOTES:

1. This page indicates letters sent granting exemptions/extensions. A single letter may contain multiple exemptions to the particular regulation cited.
- *2. There is a question as to whether or not the emergency planning exemptions are schedular or technical. They all allow non-participation by state or local authorities. Now this rule has been changed.

<u>Plant</u>	<u>Exemptions Issued</u>	<u>S/T*</u>	<u>Date Issued</u>
Arkansas 1	Appendix E - Emergency Planning	T	3/22/84
Arkansas 2	Appendix E - Emergency Planning	T	3/22/84
Beaver Valley 1	50.44(i)(3)(iii) RCS Vents	S	1/12/84
Big Rock Pt. 1	50.54(m)(2) RO/SRO Manning	T	12/30/83
	Appendix R III.G.3 Fire Prot.	T	03/20/84
	App. E - Emergency Planning	T	05/23/84
Brunswick 1	Appendix E - Emergency Planning	T	05/17/84
Brunswick 2	Appendix E - Emergency Planning	T	05/17/84
Calvert Cliffs 1	App. R (III.G and III.0) Fire Protection	T	03/15/84
	50.49 Equipment Qualification	S	06/14/84
Calvert Cliffs 2	App. R (III.G and III.0) Fire Protection	T	03/15/84
	50.49 Equipment Qualification	S	06/14/84
Cooper	Appendix R (50.48) Fire Protection	S	07/02/84
Diablo Canyon 1	Extension of Time for 50.71(e) FSAR Update	S	02/12/84
Duane Arnold	50.54(a) Appendix J	T	01/17/84
Farley 1	Appendix R - Fire Protection	T	12/30/83
	50.49 Equipment Qualification	S	04/16/84
Farley 2	Appendix R - Fire Protection	T	12/30/83
FitzPatrick	Appendix R (50.48) Fire Protection	T	02/01/84

* S = Scheduler; T = Technical

<u>Plant</u>	<u>Exemptions Issued</u>	<u>S/T*</u>	<u>Date Issued</u>
Ft. Calhoun	50.49 Equipment Qualification	S	05/18/84
Ginna	50.54(m)(2) RO/SRO Staffing	S	05/04/84
	Appendix R (50.48(c)(4)) Fire Protection	S	05/10/84
Haddam Neck	50.49 Equipment Qualification	S	04/05/84
Hatch 1	Appendix R - Fire Protection	T	04/18/84
Hatch 2	Appendix R - Fire Protection	T	04/18/84
Indian Pt. 3	Appendix R (III.G.2) Fire Protection	T	02/02/84
Kewaunee	Appendix R (50.48 (c)(4) Fire Protection	S	02/29/84
	50.54(m)(2) RO/SRO Staffing	S	04/18/84
LaCrosse	Appendix R Fire Protection	T	04/04/84
	50.54(m)(2) RO/SRO Staffing	T	12/30/83
Maine Yankee	50.54(m)(2) RO/SRO Staffing	S	01/12/84
Millstone 1	50.49 - Equipment Qualification	S	04/05/84
Monticello	Appendix J	T	06/03/84
North Anna 1	Appendix R (III.G.3) Fire Protection	T	02/23/84
	50.44(c)(3)(iii) RCS Vents	S	04/13/84
North Anna 2	Appendix R III.G.3 Fire Protection	T	02/23/84
	50.44(c)(3)(iii) RCS Vents	S	04/13/84

*S = Scheduling; T = Technical

<u>Plant</u>	<u>Exemptions Issued</u>	<u>S/T*</u>	<u>Date Issued</u>
Oconee 1	Appendix E - Emergency Planning	T	01/06/84
Oconee 2	Appendix E - Emergency Planning	T	01/06/84
Oconee 3	Appendix E - Emergency Planning	T	01/06/84
Pilgrim 1	Appendix J	T	07/02/84
Point Beach 1	50.44 RCS Vents	S	12/30/83
	50.49 Equipment Qualification	S	01/03/84
	50.54(m)(2)(1) RO/SRO Staffing	S	03/26/84
	Appendix E - Emergency Planning	T	06/15/84
Point Beach 2	50.44 RCS Vents	S	12/30/83
	50.49 Equipment Qualification	S	01/03/84
	50.54(m)(2)(1) RO/SRO Staffing	S	03/26/84
	Appendix E - Emergency Planning	T	06/15/84
Prairie Island 1	Appendix R (III.G.2) Fire Protection	T	01/09/84
	Appendix R Fire Protection	S	04/26/84
Prairie Island 2	Appendix R (III.G.2) Fire Protection	T	01/09/84
	Appendix R Fire Protection	S	04/26/84
Quad Cities 1	Appendix J	T	06/12/84
Quad Cities 2	Appendix J	T	06/12/84
Rancho Seco	50.54 (m) RO/SRO Staffing	S	06/08/84

*S = Scheduler; T = Technical

<u>Plant</u>	<u>Exemptions Issued</u>	<u>S/T*</u>	<u>Date Issued</u>
Robinson	Physical Security, Guard Training & Qualification Safeguards	T	05/18/84
San Onofre 1	Appendix E - Emergency Planning	T	02/29/84
San Onofre 2	Appendix E - Emergency Planning	T	02/29/84
San Onofre 3	Appendix E - Emergency Planning	T	02/29/84
Sequoyah 1	50.49 Equipment Qualification	S	04/11/84
Sequoyah 2	50.49 Equipment Qualification	S	04/11/84
Summer 1	Appendix E - Emergency Planning	T	03/20/84
Susquehanna 1	Appendix E - Emergency Planning	T	04/24/84
Susquehanna 2	Appendix E - Emergency Planning	T	04/24/84
TMI-1	Appendix R (III.G.2) Fire Protection	T	06/04/84
TMI-2	50.48(c) Fire Protection	T	05/18/84
Trojan	Appendix R (III.0) Fire Protection	T	03/05/84
Turkey Pt. 3	ASME Code Inspection Interval	S	03/01/84
	Appendix R Fire Protection	S	03/21/84
	Appendix R Fire Protection	T	03/27/84
Turkey Pt. 4	ASME Code Inspection Interval	S	03/01/84
	Appendix R Fire Protection	S	03/21/84
	Appendix R Fire Protection	T	03/27/84

*S = Scheduler; T = Technical

<u>Plant</u>	<u>Exemptions Issued</u>	<u>S/T*</u>	<u>Date Issued</u>
Yankee Rowe	50.44(c)(3)(ii) Hydrogen Recombiners	S	06/08/84
	50.55a(g) ASME Code	T	01/17/84
Zion 1	Appendix E - Emergency Planning	T	04/16/84
Zion 2	Appendix E - Emergency Planning	T	04/16/84
	50.44 Equipment Qualification	S	06/04/84

*S = Scheduler; T = Technical