



**U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Division of Fuel Management**

**Temporary Staff Guidance – Fuel Facility Requests
for Regulatory Relief Related to COVID-19**

Temporary Staff Guidance No.: **TSG-DFM-2020-01**

Temporary Staff Guidance Title: **Fuel Facility Requests for Regulatory Relief Related to COVID-19**

Approved By: **Andrea Kock, Director**
Division of Fuel Management

Date Approved: **April 21, 2020**

Primary Contact: **James Downs** **Kevin Ramsey**
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Responsible Organization: **NMSS/DFM**

ADAMS Accession No.: **ML20108E911**



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***by email**

OFFICE	NMSS/DFM/ FFLB/PM*	NMSS/DFM/ FFLB/BC*	OD/ OD*	OGC/GCRPS/ HLWFCNS*	NMSS/ DFM/DD*
NAME	JDowns	JZimmerman	GWilson	JBielecki	AKock
DATE	04/16/2020	04/16/2020	04/17/2020	04/21/2020	04/21/2020

OFFICIAL RECORD COPY

Temporary Staff Guidance – Fuel Facility Requests for Regulatory Relief Related to COVID-19

1. POLICY

The purpose of this temporary instruction is to give guidance to U.S. Nuclear Regulatory Commission (NRC) staff within the Office of Nuclear Material Safety and Safeguards (NMSS), Division of Fuel Management (NMSS/DFM), on the processing of fuel facility licensee requests for regulatory relief related to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).

2. BACKGROUND

On January 31, 2020, the U.S. Department of Health and Human Services declared a PHE for the United States to aid the nation's healthcare community in responding to COVID-19. On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization.

As noted in the April 7, 2020, letter from the NMSS Office Director to nuclear material licensees (NRC Agencywide Documents Access and Management System (ADAMS) Accession No. ML20094G166), the NRC recognizes that during the current COVID-19 PHE, licensees may experience challenges in meeting certain regulatory requirements. The NRC has multiple methods of providing relief from regulatory requirements while continuing to maintain safety and security. These methods fall broadly into different categories, which include exemptions from regulatory requirements, amendments to license conditions or technical specifications, and enforcement discretion. Each method has specific requirements and is appropriate under certain circumstances. The April 7, 2020, letter from the NMSS Office Director included the following information regarding these methods:

- a. The NRC has authority to provide exemptions from its regulations and amendments to license conditions and technical specifications when applicable criteria are met. Licensees that anticipate that they will be unable to comply with a regulatory requirement or license condition should contact the NRC as soon as a potential issue is identified. The NRC will consider these requests for relief on a case-by-case basis. If the requirements for an exemption or amendment are met, the NRC will provide written approval for a specified period of time. The NRC may require compensatory measures, as appropriate.

In cases where multiple licensees in a specific class are experiencing the same challenges in meeting a certain regulatory requirement, the NRC may consider developing a streamlined process for pre-identified requests for regulatory relief that are consistent with maintaining safety and security provided there is sufficient technical/regulatory justification. The staff would prepare the regulatory basis, including the specific constraints, for granting the relief and would provide a template that identifies the specific information required for staff evaluation of the requests.

It is critical for licensees to understand that compliance with the regulation or commitment from which relief is granted must be restored prior to the expiration of the exemption or amendment. Should additional time beyond the expiration of the

exemption or amendment be needed to restore compliance due to the COVID-19 PHE condition, the NRC would consider an extension to the exemption or amendment based on a subsequent request that updates all the information in the initial request.

- b. Consistent with the NRC's Enforcement Policy (ADAMS Accession No. ML19352E921), the NRC issued Enforcement Guidance Memorandum (EGM) 20-002 on April 15, 2020 (ADAMS Accession No. ML20083K794), authorizing NRC inspectors to use discretion not to cite certain violations of requirements, when specified criteria are met, to provide appropriate flexibility in responding to the changing events of the COVID-19 PHE. The staff will evaluate the need for attachments to EGM 20-002 based on issues raised by licensees and industry groups. The EGM and any accompanying attachments provide information to the NRC staff regarding temporary enforcement discretion for certain requirements, includes any conditions that must be met by the licensee for enforcement discretion to be granted, and specifies the period of time the EGM will be in effect.
- c. In the rare instances where immediate relief is required, licensees may contact their project manager, the licensing point of contact or the cognizant branch chief during normal working hours, or the Headquarters Emergency Operations Center (telephone number 301-816-5100) to communicate specific needs for regulatory relief. This is only to address unanticipated temporary situations of potential noncompliance. Where the potential noncompliance is identified in advance, other options should be pursued. In appropriate circumstances, the NRC may exercise discretion not to cite certain violations of requirements. The NRC may require compensatory measures, as appropriate.

3. OBJECTIVE

This temporary staff guidance provides NMSS/DFM staff with the basic framework for processing COVID-19 related requests for regulatory relief at fuel facilities.

These procedures are intended to enhance the efficiency of NMSS/DFM in responding to the needs of licensees and the public. Specific objectives include the following:

- Ensure that public health and safety are maintained;
- Promote consistency in the processing of requests for regulatory relief by providing the NMSS/DFM staff with a framework for the process;
- Improve the efficiency and effectiveness of internal and external communications;
- Increase technical consistency; and
- Enhance public confidence in the NRC's decision-making process for these requests.

4. PROCESS OVERVIEW

The following guidance should be used to assist in the evaluation of requests for regulatory relief from an NRC-licensed fuel facility (note that Appendix A contains a roadmap that visually outlines the steps in the process below):

Section A: Fuel facility licensee contacts NMSS/DFM for regulatory relief

1. The licensee should follow the guidance in the Regulatory Issue Summary 2010-04, "Monitoring the Status of Regulated Activities During a Pandemic" (ML100539611), and the April 7, 2020, letter from the NMSS Office Director (ML20094G166).
2. NMSS/DFM staff should document the information outlined in the items below.
3. NMSS/DFM staff should act expeditiously to consider the licensee's request.

Section B: Gather appropriate NRC staff to evaluate the request for regulatory relief and discuss with licensee

1. The NMSS/DFM Fuel Facility Project Manager (PM) and their supervisor should arrange for the appropriate technical staff and inspectors to be involved in the initial discussion with the licensee. A summary of the discussion should be docketed in ADAMS.
2. Additional NRC staff should be added as it becomes apparent that they are needed to support review of the request.
3. Special considerations include:
 - a. Office of Enforcement (OE), Office Director approval is needed to exercise enforcement discretion.
 - b. Office of the General Counsel (OGC), Division of High-Level Waste, Fuel Cycle and Nuclear Security (Assistant General Counsel) should review any exemption from the regulations or modification of an NRC order. Regarding the need to exercise enforcement discretion, staff should seek guidance from OGC, Materials Litigation and Enforcement (Assistant General Counsel), as needed.
 - c. Region II, Division of Fuel Facility Inspection (RII/DFFI) (Division Director) should be consulted for exercising enforcement discretion and inspection concerns. Note that Region II, Deputy Regional Administrator concurrence is needed on any exercise of enforcement discretion.
 - d. NMSS, Division of Rulemaking, Environmental, and Financial Support, Environmental Review Materials Branch (Branch Chief) should be consulted for environmental concerns.
 - e. Office of Nuclear Security and Incident Response (NSIR), Division of Physical and Cyber Security Policy, Materials Security Branch (Branch Chief) should be consulted for physical security concerns.
 - f. NSIR, Division of Preparedness and Response, Reactor Licensing Branch (Branch Chief) should be consulted for emergency preparedness concerns.

Section C: Confirm the appropriate authority for requesting regulatory relief

1. Did the request come from the licensee's organization that normally reviews safety or security issues at the facility (e.g., licensing manager, security manager)?
2. Is the request for regulatory relief authorized by law?
3. If the answer to either #1 or #2 above is "no", the NMSS/DFM staff should stop the process, document the finding, and indicate that the licensee should request regulatory relief under the appropriate authority.

Section D: Identify the timeframe available to consider the request for regulatory relief

1. What is the estimated timeframe before a non-compliance exists?
2. Given the timeframe in item #1 above, what process is most appropriate to address the issue? Be aware that an initial timeframe has the potential to change as the situation evolves at the licensee's facility, which may necessitate reconsidering which of the following processes is appropriate.
 - a. More than 2 weeks: consider using the standard licensing process, send emails (docketed) to facilitate as needed, to review the regulatory action.
 - b. 48 hours – 2 weeks: consider using an expedited licensing process where email (docketed) is used for official correspondence and teleconferences with documented summaries (docketed) are used to facilitate as needed.
 - c. Less than 48 hours: consider a process to exercise enforcement discretion; teleconferences should focus on documenting intake information and the NRC decision; then use the standard licensing process, with email facilitating as needed, to review the regulatory action. A template for documenting the exercise of enforcement discretion can be found in Appendix D.
3. As appropriate, NMSS/DFM Fuel Facility PMs should use standard procedures as described in the licensing review handbook for completing licensing-related actions while remaining sensitive to tasks that must be completed immediately (i.e., protect public health and safety) versus administrative actions that can be completed later.

Section E: Obtain intake information (use Fuel Facility Regulatory Relief – Intake Notebook, Appendix B)

1. Explanation of circumstances
 - a. What is the specific regulatory requirement, NRC order provision, license condition, or commitment in a licensing basis document (e.g., license application, security plan, emergency plan) from which the licensee is requesting relief?
 - b. What are the details surrounding the request for relief?

- i. What is the condition and operational status of the facility, including any degraded/out-of-service equipment or functions that may be of safety or security significance?
 - ii. To what specific portions of the facility is the requested relief applicable?
 - iii. What specific functions/actions does the licensee no longer intend to perform?
 - iv. What are the additional functions/actions that the licensee plans to take (i.e., compensatory measures, termination of certain processes)?
 - v. What is the root cause or relevant historical event that has influenced the request for relief? If the relief is needed in 48 hours or less, why was it not within the licensee's control to identify this issue sooner?
 - c. For how long will the relief be needed?
 - i. A timeframe should be established for exercising enforcement discretion; and
 - ii. The term should align with the associated regulatory action(s).
2. Basis for regulatory relief (i.e., how the NRC will determine whether reasonable assurance of adequate protection of safety and security would be maintained if the request were granted)
 - a. What is the impact of granting the relief on the following:
 - i. the public;
 - ii. facility workers;
 - iii. the environment; and
 - iv. common defense and security?
 - b. What are the potential safety and/or security issues associated with deviating from normal operations?
 - c. How do any additional functions/actions that the licensee plans to take (e.g., compensatory measures, termination of certain processes) provide a comparable level of safety or security that the requirement would otherwise mandate?
 - d. If applicable (i.e., in the case of exemptions from the regulations), why is the relief otherwise in the public interest?
3. Plan to return to normal operations
 - a. What is the proposed course of action to resolve the situation such that relief is no longer needed?
 - b. How will the licensee maintain documentation of the lapsed functions/actions?
 - c. How will the lapsed functions/actions be resolved prior to the restart of normal operations?

Section F: Document the exercise of enforcement discretion (if applicable) for requests for regulatory relief that are needed within 48 hours

1. Document the explanation of circumstances, the NRC's basis for exercising enforcement discretion (i.e., support for reasonable assurance of adequate protection of safety and security), and the licensee's plan to return to normal operations. If the relief is need in 48 hours or less, discuss why was it not within the licensee's control to identify this issue sooner.
2. Contact OE (Branch Chief, or his designee) to obtain an "EA#" from the Enforcement Action Tracking System.
3. Document the NRC decision consistent with the NRC's Enforcement Manual (OE Office Director signature authority with Director of NMSS/DFM Deputy Regional Administrator, Region II, on concurrence). A template to document the exercise of enforcement discretion is provided in Appendix D.
4. Document the appropriate follow-up regulatory action(s), as described below in Section G.
5. Confirm the timeframe for which the enforcement discretion is needed.
6. Confirm the timeframe by which the licensee will submit the appropriate follow-up regulatory action(s).

NOTE: Exercising enforcement discretion should only be used to address the unanticipated temporary situations of potential noncompliance. Where the potential noncompliance is identified in advance, other options should be pursued. In the rare instances where immediate relief is required and a licensee requests that the NRC exercise enforcement discretion, the respective NMSS/DFM Fuel Facility PM should inform the appropriate NRC staff and managers of the licensee's request. The NMSS/DFM Fuel Facility PM should then confirm, via email with the licensee, the request for the NRC to exercise enforcement discretion and the information in the intake notebook. The NMSS/DFM Fuel Facility PM should docket the confirmation email from the licensee and the confirmed intake notebook. A meeting, including the NRC OE Office Director (or designee), respective NRC Division Director(s), and any staff needed to support the discussion (e.g., technical experts, enforcement specialist/coordinator, legal counsel) should be convened to determine if there is a basis for the NRC to exercise enforcement discretion. If additional information is needed, all follow-up contact with the licensee should be appropriately documented and docketed. Upon reaching a decision on the exercise of enforcement discretion, the formal letter should be developed using the provided template and concurrence chain (Appendix D). The formal letter on exercising enforcement discretion must document items 4.F.1 – 4.F.6 above and specify any terms of the enforcement discretion. Once the formal letter on exercising enforcement discretion is signed, it should be sent via email to the licensee.

In the very rare instances where there is not sufficient time for the licensee to send an email confirming the request for NRC to exercise enforcement discretion and the information in the intake notebook, a verbal approval of enforcement discretion may be given to a licensee by the OE Office Director. In those cases, the respective NMSS/DFM Fuel Facility PM should draft a meeting summary of the verbal discussion that documents the principal NRC staff members

who participated in the call, items 4.F.1 – 4.F.6 above, all terms of the enforcement discretion, and the information from the intake notebook that was verbally provided. The meeting summary should be provided to the respective SES manager for review within 24 hours and, once finalized, sent to the licensee via an email docketed in ADAMS (See Appendix C). After this email communication is docketed, the formal letter documenting the exercise of enforcement discretion should be developed and processed using the provided template and concurrence chain (Appendix D). The formal letter on exercising enforcement discretion should again document items 4.F.1 – 4.F.6 above and any terms of the enforcement discretion.

Section G: Determine regulatory action(s) to be taken related to the regulatory relief

1. What type(s) of regulatory action(s) is/are appropriate for the regulatory relief?
 - a. Relief from a specific regulatory requirement would require an exemption, documented in a license condition, issued via an amendment to the license (i.e., follow the standard procedure with expedited effort and increased use of technological efficiencies; Director of NMSS/DFM has signature authority with the Assistant General Counsel for High-Level Waste, Fuel Cycle and Nuclear Security on concurrence). It is recommended that exemptions be temporary, specific to the COVID-19 PHE, and reference site-specific thresholds or a timeframe for which the relief is applicable. Exemptions must:
 - i. be in accordance with 10 CFR 70.17;
 - ii. be authorized by law;
 - iii. not endanger life or property or the common defense and security; and
 - iv. otherwise be in the public interest.
 - b. Relief from an NRC order's provision(s) would require good cause for relaxing the specific provision(s) pursuant to the terms of the order (i.e., follow the standard procedure, letter to licensee, with expedited effort and increased use of technological efficiencies; order signatory, typically the NMSS Office Director, has authority (OGC should be on concurrence). Each order has specific language related to relaxation. It is recommended that the relaxation of an order be temporary, specific to the COVID-19 PHE, and reference site-specific thresholds or a timeframe for which the relief is applicable.
 - c. Relief from a license condition would require a revised or new license condition, issued via an amendment to the license (i.e., follow the standard procedure with expedited effort and increased use of technological efficiencies; typically, the Chief of the Fuel Facility Licensing Branch has delegated signature authority). It is recommended that temporary license conditions be used which are specific to the COVID-19 PHE and reference site-specific thresholds or a timeframe for which the relief is applicable. License conditions must be in accordance with 10 CFR 70.32. The Commission may impose such conditions and limitations into any license with respect to the licensee's ownership, receipt, possession, use, and transfer of special nuclear material as it deems appropriate or necessary in order to:
 - i. promote the common defense and security;
 - ii. protect health or to minimize danger to life or property;
 - iii. protect restricted data;
 - iv. guard against the loss or diversion of special nuclear material; and

- v. require such reports and the keeping of such records, and to provide for such inspections, of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder.
 - d. Commitments in a licensing basis document may be required by license conditions. Relief from these commitments is typically implemented by revising the licensing basis document, documenting the revision in a license condition, and issuing an amendment to the license (the Chief of the Fuel Facility Licensing Branch has delegated signature authority). For short-term relief from such commitments associated with the COVID-19 PHE, however, it is recommended that changes to licensing basis documents be captured explicitly in license conditions, effective for specified time frames. This allows for license conditions to be specific to the COVID-19 PHE and reference site-specific thresholds and/or timeframe for which relief is applicable. Licensing basis documents, per the requirements of 10 CFR 70.22, typically include the:
 - i. License Application;
 - ii. Fundamental Nuclear Material Control Plan;
 - iii. Physical Protection Plan;
 - iv. Emergency Plan; and
 - v. Any other document specifically referenced by an existing license condition.
- 2. By when will the licensee provide the NRC with the associated regulatory action(s) or any other supplemental information needed to process the regulatory actions(s)?
- 3. Will the consideration of environmental factors impact the time needed for NRC to process any licensing action(s)?
 - a. Licensing actions require appropriate consideration under the National Environmental Policy Act (i.e., Environmental Assessment / Environmental Impact Statement) as part of the staff's evaluation (see NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs").
 - b. Categorical exclusions, if applicable, must be appropriately documented:
 - i. An exemption may meet the categorical exclusion criteria in 10 CFR 51.22(c)(25).
 - ii. License amendments may meet other categorical exclusions listed in 10 CFR 51.22(c).

5.0 PROCESS

The licensee's request should be reviewed, along with any needed supplemental information through the appropriate process to document the NRC decision. Standard internal procedures (e.g., Licensing Review Handbook) should be followed. However, the process should be expedited with additional staff resources and increased use of technological efficiencies as discussed in Section 4.0. The official NRC action (e.g., license condition or response letter) should reference the incoming letter and any discussion referring to the declared PHE for the United States to aid the nation's

healthcare community in responding to the COVID-19. Conditions of approval in the official NRC action should: (1) be specific to the COVID-19 PHE and (2) reference site-specific thresholds or a timeframe for which the relief is applicable.

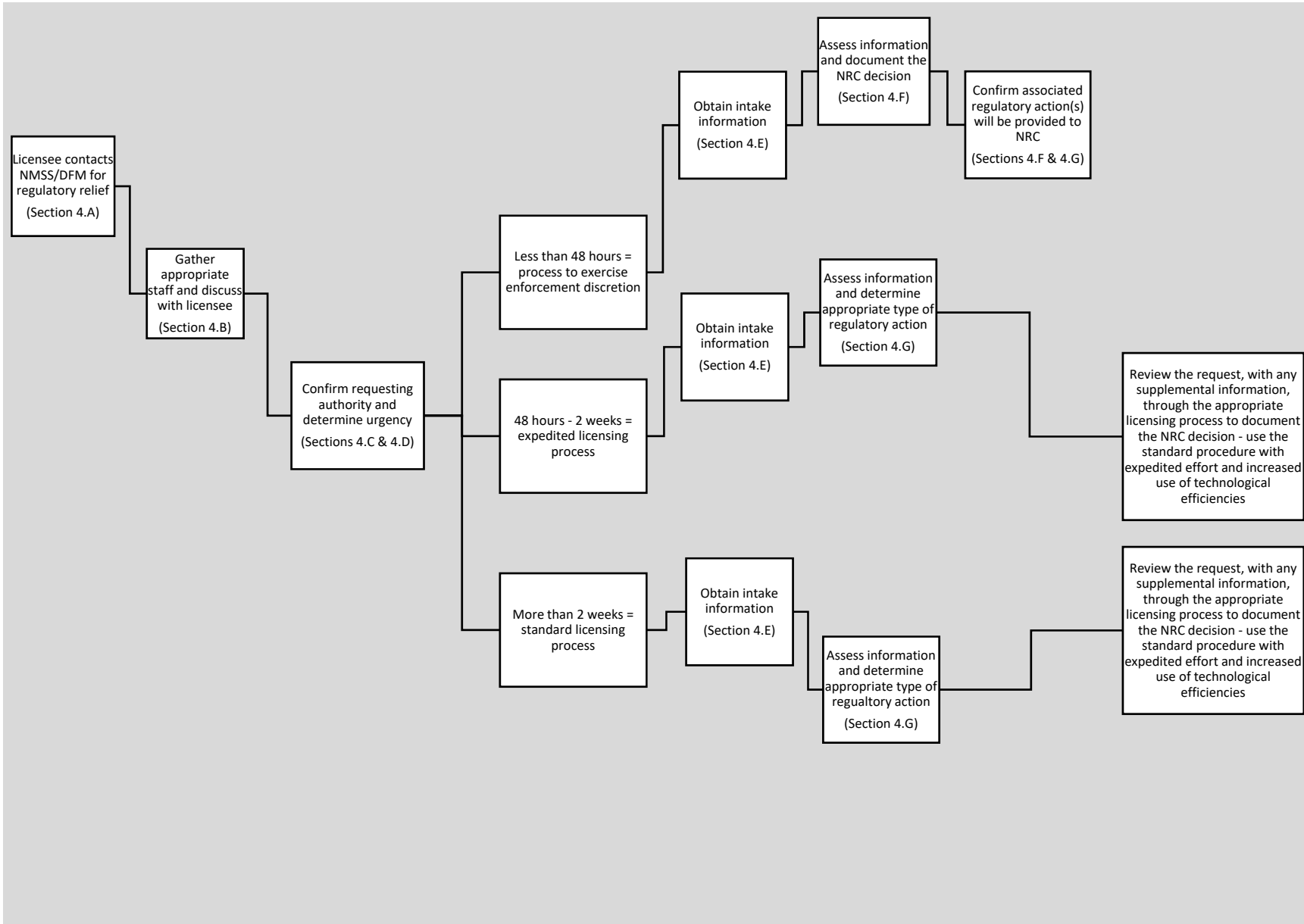
Enclosures:

1. Appendix A: Regulatory Relief Roadmap
2. Appendix B: Intake Notebook
3. Appendix C: Meeting Summary for Exercising Enforcement Discretion (Template)
4. Appendix D: Fuel Facility Regulatory Relief – Letter Documenting the Exercise of Enforcement Discretion (Template)

Appendix A

Regulatory Relief Roadmap

Fuel Facility Regulatory Relief Roadmap – Guidance Overview



Appendix B

Intake Notebook

iii. What specific functions/actions does the licensee no longer intend perform?

iv. What are the additional functions/actions that the licensee plans to take (i.e., compensatory measures, termination of certain processes, etc.)?

v. What is the root cause or relevant historical event that has influenced the request for relief? If the relief is needed in 48 hours or less, why was it not within the licensee's control to identify this issue sooner?

c. For how long will the relief be needed?

2. Basis for regulatory relief (i.e., how the NRC is able to conclude that reasonable assurance of adequate protection of safety and security is being maintained)

a. What is the impact of granting the relief on the following:

i. the public;

ii. facility workers;

iii. the environment; and

iv. common defense and security?

- b. What are the potential safety and/or security issues associated with deviating from normal operations?
 - c. How do the additional functions/actions that the licensee plans to take (i.e., compensatory measures, termination of certain processes, etc.) provide a comparable level of safety that the requirement would otherwise mandate?
 - d. If applicable (i.e., exemptions from the regulations), why is the relief otherwise in the public interest?
3. Plan to return to normal operations
- a. What is the proposed course of action to resolve the situation such that relief is no longer needed?
 - b. How will the licensee maintain documentation of the lapsed functions/actions?
 - c. How will the lapsed functions/actions be resolved prior to the restart of normal operations?

Exercise of Enforcement Discretion

1. Is exercising enforcement discretion being requested (i.e., a non-compliance is likely to occur within 48 hours)?
2. If yes, for how long will the enforcement discretion be needed?
3. If enforcement discretion is requested, by when will the licensee submit the appropriate follow-up regulatory action(s)?

Regulatory action(s) related to the regulatory relief

1. What type(s) of regulatory action(s) is/are appropriate for the regulatory relief?
(CHECK THE NEEDED BOXES)

- Relief from a specific regulatory requirement would require an exemption, documented in a license condition, issued via an amendment to the license. Exemptions must:
- i. be in accordance with 10 CFR 70.17;
 - ii. be authorized by law;
 - iii. not endanger life or property or the common defense and security; and
 - iv. otherwise be in the public interest.
- Relief from an NRC order's provision(s) would require relaxing the specific provision(s) pursuant to the terms of the order.
- Relief from a license condition would require a revised or new license condition, issued via an amendment to the license. License conditions must be in accordance with 10 CFR 70.32. The Commission may impose such conditions and limitations into any license with respect to the licensee's ownership, receipt, possession, use, and transfer of special nuclear material as it deems appropriate or necessary in order to:
- i. promote the common defense and security;
 - ii. protect health or to minimize danger to life or property;
 - iii. protect restricted data;
 - iv. guard against the loss or diversion of special nuclear material; and
 - v. require such reports and the keeping of such records, and to provide for such inspections, of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations.
- Relief from a commitment in a licensing basis document that is required by license condition would require documenting the revised language, either in a temporary license condition or in a revision to the licensing basis document, issued via an amendment to the license. Licensing basis documents, per the requirements of 10 CFR 70.22, typically include the:
- i. License Application;
 - ii. Fundamental Nuclear Material Control Plan;
 - iii. Physical Protection Plan;
 - iv. Emergency Plan; and
 - v. Any other document specifically referenced by a current license condition.

2. By when will the licensee provide the NRC with the associated regulatory action(s) or any other supplemental information needed to process the requested actions(s)?

3. What environmental factors may need to be considered?

Appendix C

MEETING SUMMARY FOR EXERCISING ENFORCEMENT DISCRETION TEMPLATE

MEETING SUMMARY RELATED TO VERBAL APPROVAL TO
EXERCISE ENFORCEMENT DISCRETION
DIVISION OF FUEL MANAGEMENT,
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
[DOCKET/LICENSE NUMBERS]
[DATE]

On [MONTH DAY], 2020, [LICENSEE] identified a need for regulatory relief in the form of [EXEMPTION, ORDER RELAXATION, OR LICENSE AMENDMENT] from the requirements of [STATE REQUIREMENT FROM WHICH RELIEF IS BEING REQUESTED]. This need was communicated by [LICENSEE – NAME OF SENIOR MANAGER] to the U.S. Nuclear Regulatory Commission (NRC) Project Manager via email dated [MONTH DAY], 2020.

A meeting was held between [LICENSEE] and [NRC STAFF MEMBERS AND MANAGEMENT]. A copy of the intake notebook is attached to this meeting summary. The following items were discussed during the meeting.

[DOCUMENT THE EXPLANATION OF CIRCUMSTANCES, THE NRC'S BASIS FOR GRANTING ENFORCEMENT DISCRETION, AND THE LICENSEE'S PLAN TO RETURN TO NORMAL OPERATIONS.

DOCUMENT NRC DECISION CONSISTENT WITH NRC'S ENFORCEMENT MANUAL.

DOCUMENT THE APPROPRIATE FOLLOW-UP REGULATORY ACTION(S).

CONFIRM THE TIMEFRAME FOR WHICH THE ENFORCEMENT DISCRETION IS NEEDED.]

George Wilson, Director, NRC Office of Enforcement, in consultation with the relevant NRC technical branches, made the following findings.

[STATE SPECIFICALLY THE REQUIREMENTS FOR WHICH DISCRETION IS BEING EXERCISED]

This verbal authorization does not preclude the NRC staff from asking additional clarification questions regarding the licensee's plans, while preparing the subsequent written evaluation.

The following terms of the letter documenting the exercise of enforcement discretion are to be included [State agreed upon terms] as part of the enforcement discretion:

On the basis of the NRC staff's evaluation of [INSERT LICENSEE]'s request, we concluded that granting this exercise of enforcement discretion is consistent with the NRC's Enforcement Policy, staff guidance, and reasonable assurance of adequate protection of public health and safety and the common defense and security. Therefore, as communicated orally to your staff at [INSERT TIME] EDT on [INSERT DATE], 2020, we exercised discretion to not take enforcement action for your temporary non-compliance with [INSERT REGULATION, ORDER, LICENSE CONDITION, OR COMMITMENT FROM LICENSING BASIS DOCUMENT].

[INSERT ANY CONDITIONS OF THE DISCRETION AND A SUMMARY OF FOLLOW-UP REGULATORY ACTION(S) OR LICENSEE ACTIONS EXPECTED TO BE TAKEN TO EXIT FROM THE DISCRETION]

FOLLOW-ON INSTRUCTIONS TO PM:

The meeting summary should be provided to the Director of the Office of Enforcement (George Wilson) for review within 24 hours and, once finalized, sent to the licensee via an email docketed in ADAMS. After this email communication is docketed, the formal letter documenting the exercise of enforcement discretion should be developed and processed using the provided template and concurrence chain. The formal letter should again document the items in Section 4.F of the temporary staff guidance and any terms of the enforcement discretion.

Appendix D

**FUEL FACILITY REGULATORY RELIEF –
LETTER DOCUMENTING THE EXERCISE
OF ENFORCEMENT DISCRETION
(TEMPLATE)**



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

NAME, TITLE
POSITION
LICENSEE ADDRESS
CITY, STATE ZIP

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION FOR [INSERT LICENSEE NAME],
EA-YY-NNN [PROVIDED BY NRC OFFICE OF ENFORCEMENT]

Dear [INSERT NAME]:

By email dated [INSERT MONTH DAY], 2020 (ADAMS Accession No. ML20XXXXXXX), [INSERT NAME OF LICENSEE] requested that the U.S. Nuclear Regulatory Commission (NRC) exercise discretion not to take enforcement action for temporary non-compliance with the actions required by [INSERT REGULATION, ORDER PROVISION, LICENSE CONDITION, OR COMMITMENT FROM LICENSING BASIS DOCUMENT].

Your email confirmed your explanation of the circumstances regarding the non-compliance and its relationship to Coronavirus Disease 2019 Public Health Emergency, the basis for regulatory relief, and your plan to return to normal operations. [IF APPLICABLE: Your email documented information previously discussed with the NRC in a telephone conference on [INSERT MONTH DAY], 2020, at [INSERT TIME] Eastern Daylight Time (EDT) (ADAMS Accession No. ML20XXXXXXX). The principal NRC staff members who participated in the telephone conference are noted in the referenced meeting summary. The staff determined that the information in your email requesting the exercise of enforcement was consistent with your oral request.] The NRC first became aware of the potential for this request to exercise enforcement discretion on [INSERT MONTH DAY], 2020, at approximately [INSERT TIME] EDT.

You requested that an exercise of enforcement be granted pursuant to the NRC's policy regarding exercise of discretion, set out in Section 3.0 of the Enforcement Policy, and that the exercise of enforcement discretion be effective for [INSERT TIMEFRAME]. [IF APPLICABLE: This letter documents our telephone conversation at [INSERT TIME] on [INSERT MONTH DAY], 2020, when we orally granted this request to exercise enforcement discretion.]

Summary

[INSERT A SUMMARY OF: THE EXPLANATION OF CIRCUMSTANCES; ANY ADDITIONAL FUNCTIONS/ACTIONS THAT THE LICENSEE PLANS TO TAKE; INFORMATION TO SUPPORT THE FINDING OF REASONABLE ASSURANCE OF ADEQUATE PROTECTION OF SAFETY AND SECURITY; AND THE LICENSEE'S PLAN TO RETURN TO NORMAL OPERATIONS]

On the basis of the NRC staff's evaluation of [INSERT LICENSEE]'s request, we concluded that granting this exercise of enforcement discretion is consistent with the NRC's Enforcement Policy, staff guidance, and reasonable assurance of adequate protection of public health and safety and the common defense and security. Therefore, as communicated orally to your staff at [INSERT TIME] EDT on [INSERT DATE], 2020, we exercised discretion to not take

enforcement action for your temporary non-compliance with [INSERT REGULATION, ORDER, LICENSE CONDITION, OR COMMITMENT FROM LICENSING BASIS DOCUMENT].

[INSERT ANY CONDITIONS OF THE DISCRETION AND A SUMMARY OF FOLLOW-UP REGULATORY ACTION(S) OR LICENSEE ACTIONS EXPECTED TO BE TAKEN TO EXIT FROM THE DISCRETION]

As stated in the NRC Enforcement Policy, enforcement action may be taken to the extent that violations were involved for the root cause that led to the noncompliance for which this exercise of enforcement discretion was necessary. The NRC's Office of Enforcement has entered this exercise of enforcement discretion into the NRC's Enforcement Action Tracking System and assigned [ENTER "EA" NUMBER] to capture the enforcement discretion.

If you have any questions regarding this matter, please contact [INSERT NAME OF NRC PROJECT MANAGER] at [INSERT NRC PROJECT MANAGER PHONE NUMBER], or via email to: [INSERT NRC PROJECT MANAGER EMAIL].

Sincerely,

George A. Wilson, Director
Office of Enforcement

Docket No. 70-XXX
License No. SNM-XXX

cc: XXXX@listmgr.nrc.gov

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION FOR [INSERT LICENSEE NAME], EA-YY-NNN [PROVIDED BY NRC OFFICE OF ENFORCEMENT]

DATED: MONTH XX, 2020

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***via email**

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