

PRELIMINARY DRAFT DOCUMENT FOR DISCUSSION AT PLANNED PUBLIC MEETING



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

April 30, 2020

All Holders of, and applicants seeking,
U.S. Nuclear Regulatory Commission (NRC)
Licenses that Authorize the Possession of Category 1 or 2
Quantities of Radioactive Materials (Including Licenses
Authorizing Possession of Category 1 or 2 Quantities
of Radioactive Materials Incidental to Service), NRC
Master Materials Licensees, Agreement State
Radiation Control Program Directors, and State Liaison
Officers, with the exception of Operating Power Reactors

**SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED
TO CERTAIN REQUIREMENTS FOR PART 37 DURING THE CORONAVIRUS
DISEASE 2019 PUBLIC HEALTH EMERGENCY**

As you know, on January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). On March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. In all of our actions, the staff of the U.S. Nuclear Regulatory Commission (NRC), continues its commitment to following the NRC's Principles of Good Regulation (independence, openness, efficiency, clarity, and reliability) while performing our mission.

In keeping with these principles, this letter provides information regarding licensee requests for temporary exemptions from certain Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37 security requirements during the COVID-19 PHE, and the process that the NRC plans to use when reviewing such requests. This information is applicable to licensees that possess or use an aggregated quantity of category 1 and 2 radioactive material and should not be used for relief requests related to operating power reactors.

Under the NRC's regulations in 10 CFR 37.11(a), "Specific exemptions," "The Commission may upon application of any interested person or on 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."

Consistent with this regulation, this letter contains information that may inform licensee requests for temporary exemptions from certain security requirements in 10 CFR Part 37. As described below, the NRC is prepared to expeditiously process temporary relief requests submitted by individual licensees. Exemption requests that do not provide the information specified in this letter may require additional requests for information. The objective of this expedited review process is to facilitate the processing of licensee requests for exemption from certain 10 CFR Part 37 security requirements to ensure that the requirements do not unduly limit licensee flexibility in using personnel resources in a manner that most effectively manages the impacts of the COVID-19 PHE to maintain the safe and secure operation of licensed activities.

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Additionally, these exemptions would, if granted, facilitate the licensee's implementation of security requirements in 10 CFR Part 37 in a manner that does not conflict with practices recommended by the Centers for Disease Control and Prevention to limit the spread of the coronavirus.¹ As noted above, these planned actions do not apply to operating power reactors.

When a licensee expects that it will not be able to comply with one or more of the requirements of 10 CFR Part 37, then the licensee should, as soon as practicable, notify the NRC in writing that it is requesting a temporary exemption from the specific subsection(s) of 10 CFR Part 37. To aid the NRC in its expedited review, any such request should, at a minimum, include the following information:

- a statement that the licensee expects that it will no longer be able to comply with the requirements of the specific subsection(s) of 10 CFR Part 37 identified below;
- the site-specific reason that the COVID-19 PHE prevents the licensee from being able to meet the specific regulatory requirement from which it is seeking an exemption.
- Information noted below regarding the specific regulatory provision for which the licensee is seeking an exemption.

Provision of all the requested information will facilitate the NRC's expedited review of licensee temporary exemption requests.

10 CFR Part 37 Requirements For Which NRC May Consider Expedited Requests for Temporary Exemption

1. Reviewing Official Recertification – 10 CFR 37.23(b)(2)

The requirement in 10 CFR 37.23(b)(2), states, in part:

(b)(2) ...The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with 37.25(c) [FBI identification and criminal history records check].

Licensees may seek a temporary exemption from this requirement to address the challenges licensees may face when attempting to obtain fingerprints for individuals during the COVID-19 PHE because of the potential for reduced staffing and the potential for a lack of available locations open for licensees to receive the service due to COVID-19 PHE considerations. The exemption would also facilitate licensee implementation of the social distancing practices recommended by the Centers for Disease Control and Prevention. If the exemption is granted, these previously qualified reviewing officials would be required to comply with all other applicable regulatory requirements unless granted additional exemptions.

The licensee should, as soon as practicable, notify the U.S. Nuclear Regulatory Commission (NRC) in writing that it is requesting a temporary exemption from 10 CFR 37.23(b)(2). This request should include the following information:

¹ The recommended Centers for Disease Control and Prevention practices can be found at the following website: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited April 17, 2020).

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- A statement that the licensee will maintain a list of the names of the reviewing officials who will not have a recertification completed within the required 10 year recertification period. This list should include the dates of initial qualification for these reviewing officials; and
- A statement that the licensee will document that, notwithstanding the delayed fingerprinting and FBI identification and criminal history record check, the licensee has reasonable assurance that the reviewing official remains trustworthy and reliable.

2. Reinvestigations of Individuals Granted Unescorted Access – 10 CFR 37.25(c)

The requirement in 10 CFR 37.25(c), states:

(c) *Reinvestigations*. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with 37.27. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

Licensees may seek a temporary exemption from this requirement to address the challenges licensees may face when attempting to obtain fingerprints for individuals granted unescorted access during the COVID-19 PHE because of the potential for reduced staffing and the potential for a lack of available locations open for licensees to receive the service due to COVID-19 PHE considerations. The exemption would also facilitate licensee implementation of the social distancing practices recommended by the Centers for Disease Control and Prevention. If the exemption is granted, these individuals that were previously determined to be trustworthy and reliable would be required to comply with all other applicable regulatory requirements unless granted additional exemptions.

The licensee should, as soon as practicable, notify the U.S. Nuclear Regulatory Commission (NRC) in writing that it is requesting a temporary exemption from 10 CFR 37.25(c). This request should include the following information:

- A statement that the licensee will maintain a list of the names of the individuals who will not have a reinvestigation completed within the required 10 year reinvestigation period. This list should include the dates of initial qualification for these individuals; and
- A statement that the licensee will document that, notwithstanding the delayed fingerprinting and FBI identification and criminal history record check, the licensee has reasonable assurance that the individual remains trustworthy and reliable.

3. Security Program Refresher Training - 10 CFR 37.43(c)(3)

The requirement in 10 CFR 37.43(c), states, in part:

(c)(3) Refresher training must be provided at a frequency not to exceed 12 months and when significant challenges have been made to the security program. ...

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Licensees may seek a temporary exemption from 10 CFR 37.43(c)(3) to address the challenges licensees may face in ensuring adequate staffing of security personnel during the COVID-19 PHE. Training may require significant staff support to implement. Therefore, the training process potentially places staff in close proximity to one another, increasing the likelihood of staff exposure to COVID-19. The exemption, if granted, could facilitate licensee implementation of the social distancing practices recommended by the Centers for Disease Control and Prevention. If the exemption is granted, these previously trained security personnel will be required to comply with all other applicable regulatory requirements for training and qualification unless granted additional exemptions.

The licensee should, as soon as practicable, notify the U.S. Nuclear Regulatory Commission (NRC) in writing that it is requesting a temporary exemption from 10 CFR 37.43(c)(3). This request should include the following information:

- A statement that the licensee will maintain a list of the names of the individuals who will not have the refresher training completed within the required period. This list should include the dates of the last refresher training provided to these individuals; and
- Describe measures the licensee will take to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively and the licensee will continue to evaluate the individuals' performance to identify and correct performance issues in a timely manner.

4. Maintenance and Testing Requirements – 10 CFR 37.51(a)

The requirement in 10 CFR 37.51(a) states, in part:

- (a) ... The equipment relied on to meet the security requirements of this part must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not exceed 12 months.

Licensees may seek a temporary exemption from 10 CFR 37.51(a) to address the challenges licensees may face in ensuring adequate staffing of trained personnel to inspect or test for operability and performance, or challenges faced by their service provider to perform the inspection and testing of equipment during the COVID-19 PHE. The exemption would also facilitate licensee implementation of the social distancing practices recommended by the Centers for Disease Control and Prevention. If the exemption is granted, the equipment relied on to meet the security requirement must continue to meet all other applicable regulatory requirements unless granted additional exemptions.

The licensee should, as soon as practicable, notify the U.S. Nuclear Regulatory Commission (NRC) in writing that it is requesting a temporary exemption from 10 CFR 37.51(a). This request should include the following information:

- A statement that the licensee will document the equipment relied on to meet security requirements that was not inspected and tested under the maintenance and testing program as required. This document should identify the dates the equipment was last inspected and tested under the maintenance and testing program; and

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- A statement that the licensee has self-monitoring, tamper indicating alarms systems that enable the licensee to meet 10 CFR 37.49 detection, assessment, and response requirements upon any failure of an alarm thereby ensuring the security of the material notwithstanding the authorization of this exemption.

Regulatory Options for Licensees

The NRC is aware that during this COVID-19 PHE, each licensee may have license-specific regulatory challenges for which regulatory relief may be sought. By letter dated April 7, 2020 (Agencywide Documents Access and Management System Accession No. ML20094G166), *U.S. Nuclear Regulatory Commission Methods for Providing Regulatory Relief During the Coronavirus Disease 2019 Public Health Emergency*, was issued to outline potential regulatory options for licensees (including byproduct material, uranium recovery, decommissioning (both materials and reactors), fuel facilities, and spent fuel storage facilities) to seek regulatory relief that may be necessary during the COVID-19 PHE. Refer to this letter for a discussion of additional options that may be available to licensees. Should any implementation issues arise during the period of exemption, the NRC may consider other available regulatory options, including additional temporary exemptions or enforcement discretion, if appropriate.

How to Submit Requests

Licensees should make every effort to submit timely temporary exemption requests in accordance with 10 CFR 37.7, "Communications." To ensure the timely receipt and review of these exemption requests, licensees that plan to request an expedited review must contact their facility's NRC project manager or Regional office for assistance before submitting the request. An email to the facility's NRC project manager or Regional Office from a senior level licensee manager with decision-making authority with a copy to the NRC Document Control Desk is an acceptable format for the written exemption request. **Do not include Safeguards or Classified Information in any exemption request.** The expedited temporary exemption request process should not be used for relief requests related to operating reactors. To submit requests for temporary exemptions, see the nuclear materials relief request form at <https://www.nrc.gov/about-nrc/covid-19/materials/>

Review Process

The NRC will consider these requests on a case-by-case basis and, if the requirements for a temporary exemption are met, will provide a written decision. If sufficient time is not available for the NRC to provide a prior written decision for the exemption, then the NRC may provide a verbal decision that will be followed promptly by a written evaluation documenting the approval or a letter documenting the denial of the request.

Duration of Temporary Exemption

Temporary exemptions that are approved under this expedited process are in effect for 90 days. Licensees must come back into compliance with the Part 37 regulations or receive approval for an additional exemption period from the NRC before the end of each approved exemption period. As with the initial approval, subsequent approvals would be granted in writing or verbally, depending on the timing of the licensee's request.

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Alternative Approaches

This letter does not preclude requests for temporary exemptions that take a different approach or present different rationales or proposed end dates. The NRC cannot guarantee expedited consideration of such requests.

Further Questions

If you have any further questions about this matter, please contact George Smith (George.Smith@nrc.gov) of my staff for assistance.

Paperwork Reduction Act

This letter contains guidance for implementing the voluntary information collections related to requesting exemptions from requirements contained in 10 CFR Parts 30 - 37, 39, 40, 50, 70, and 72 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget under control numbers 3150-0017, -0007, -0010, -0158, -0214, -0130, -0020, -0011, -0009, and -0132, respectively. Send comments regarding these information collections to the Information Services Branch (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to Infocollects.Resource@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

Sincerely,

Michael C. Layton, Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

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SUBJECT: LETTER TO LICENSEES - U.S. NUCLEAR REGULATORY COMMISSION
PLANNED ACTIONS RELATED TO CERTAIN REQUIREMENTS FOR PART 37 DURING THE
CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY DATED APRIL 30, 2020

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*via email

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