



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

May 20, 2020

All Holders of, and applicants seeking,
U.S. Nuclear Regulatory Commission (NRC)
Licenses Authorizing Possession of Category 1 or 2 Quantities
of Radioactive Materials), 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. The U.S. Nuclear Regulatory Commission (NRC) is aware that, during this COVID-19 PHE, licensees may experience regulatory challenges for which they may seek relief. 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*, the Director of the Office of Nuclear Material Safety and Safeguards outlined 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. The options were further discussed at a May 5, 2020 public meeting with regulated entities.

In all of our actions, the NRC staff is committed 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 materials licensees that possess or use an aggregated quantity of category 1 and 2 radioactive material and should not be used for exemption requests related to operating power reactors without further discussion with the points of contact in the Office of Nuclear Reactor Regulation. The NRC has issued separate information regarding requests for temporary exemptions from certain security requirements at operating reactors. This information is available on the NRC website at <https://www.nrc.gov/about-nrc/covid-19/security-ep/training-qualification-req.html>. NRC has also issued separate information regarding requests for temporary exemptions from the requirements of Parts 30, 34, and 35 for materials licensees. This information is available on the NRC website at <https://www.nrc.gov/about-nrc/covid-19/materials/med-indust-academic.html>.

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 expedite its review of temporary exemption requests from certain subsections in Part 37 submitted by individual licensees. Exemption requests that provide the information discussed in this letter will be reviewed using the expedited review process. Exemption requests that do not provide the information specified in this letter, or that fall outside the parameters discussed in this letter, will be handled using the normal exemption process.

The objective of this expedited review process is to facilitate the processing of licensee requests for temporary 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. 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, this expedited review process does not apply to operating power reactors unless approved by the Office of Nuclear Reactor Regulation.

On May 5, 2020, the NRC staff held a public meeting to hear from licensees on their concerns with the effect of the COVID-19 PHE on their operations and with how to seek relief from regulation during this period. The summary of that meeting and other related documents are available in NRC's ADAMS document management system at ML20134H965.

When a licensee expects that it will not be able to comply with one or more of the requirements of 10 CFR Part 37, 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; and

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

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 May 19, 2020).

NRC licensees with exemptions approved by the NRC that will operate in an Agreement State under reciprocity should contact the Agreement State prior to working in their jurisdiction to discuss the NRC exemption.

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, for example, the challenges of obtaining fingerprints 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. If the exemption is granted, these previously qualified reviewing officials would be required to comply with all other applicable regulatory requirements unless granted additional relief.

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). To facilitate expedited review of such an exemption request, this request should, at a minimum include:

- 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, for example, the challenges of obtaining 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. 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 relief.

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). To facilitate expedited review of such an exemption request, the request should, at a minimum, include:

- 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 changes have been made to the security program. ...

Licensees may seek a temporary exemption from this requirement to address, for example, the challenges licensees may face in ensuring adequate staffing of 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. If the exemption is granted, these previously trained personnel will be required to comply with all other applicable regulatory requirements for training and qualification unless granted additional relief.

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). To facilitate expedited review of such an exemption request, the request should, at a minimum, include:

- 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
- A description of the 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.

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 to exceed 12 months.

Licensees may seek a temporary exemption from this requirement to address, for example, 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. 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 relief.

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).

To facilitate expedited review of such an exemption request, this request should, at a minimum, include:

- 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
- 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.

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 should contact their facility's NRC project manager or Regional office for assistance before submitting the request.

Licensees may request temporary exemptions by submitting the form at <https://www.nrc.gov/about-nrc/covid-19/materials/> or by written request with an email to the facility's NRC project manager or Regional Office² from a senior level licensing manager with decision-making authority with a copy to the NRC Document Control Desk. **Do not use the form to request exemptions that involve Safeguards or Classified Information.** The expedited temporary exemption request process should not be used for requests related to operating power reactors unless approved by the Office of Nuclear Reactor Regulation.

² Region I-issued materials licenses; James Trapp, RI/Division of Nuclear Materials Safety (DNMS), James.Trapp@nrc.gov; Region III-issued materials licenses; David Pelton, RIII/DNMS, David.Pelton@nrc.gov; Region IV-issued materials licenses: Mary Muessle, RIV/DNMS; Mary.Muessle@nrc.gov; NMSS-issued licenses: Andrea Kock, NMSS/DFM Andrea.Kock@nrc.gov; NMSS-issued licenses: Patricia Holahan, NMSS/DUWP, Patricia.Holahan@nrc.gov; NRR-issued licenses: John Monninger, NRR/DANU, John.Monninger@nrc.gov.

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 written decision for the exemption, then the NRC may provide a verbal decision that will be followed promptly by a letter documenting the approval or the denial of the request.

Duration of Temporary Exemption

The duration of approved temporary exemptions will be determined on a case-by-case basis. Temporary exemptions for materials licensees that the NRC has approved to date for COVID-19 related requests under this expedited process are in effect for periods of 30, 90, or 120 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 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.

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 regarding implementing the voluntary information collections related to requesting exemptions from requirements contained in 10 CFR Part 37, that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). These information collections were approved by the Office of Management and Budget under control number 3150-0214. 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 (3150-0214), 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,

Kevin Williams, Acting Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO CERTAIN REQUIREMENTS FOR TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* PART 37 DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

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MLayton, NMSS
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BReed, NRR

ADAMS Accession Number: ML20134H934

***via email**

OFFICE	NMSS/MSST	NMSS/MSST	OGC	NMSS/MSST
NAME	PGoldberg	TMossman	ACoggins	KWilliams
DATE	5/13/2020	5/13/2020	5/19/2020	5/20/2020

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