



June 15, 2020
NG-20-0047
10 CFR 26.9

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555-0001

Duane Arnold Energy Center
Docket No. 50-331
Renewed Facility Operating License No. DPR-49

Supplement to Exemption Request for Access Authorization and Fitness for Duty Requirements Due to COVID-19 Pandemic

References:

1. Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID-19 Pandemic, May 21, 2020 (ADAMS Accession No. ML20142A192)
2. Notice of Meeting with NextEra Energy/Florida Power & Light Company Regarding Exemption Requests Regarding Access Authorization and Fitness for Duty Requirements Due to COVID-19, June 3, 2020 (ADAMS Accession No. ML20155K885)

In Reference 1, NextEra Energy Duane Arnold, LLC (NEDA) requested an exemption from certain access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56 due to isolation activities (e.g., social distancing) in effect at the Duane Arnold Energy Center (DAEC) in response to the COVID-19 public health emergency (PHE). During a public meeting (Reference 2), NEDA agreed to supplement the exemption request with information detailing the requirements within the regulations warranting an exemption, the reason(s) the requirements cannot be met and the compensatory measures and/or controls that will be in effect during the requested exemption period.

The enclosure to this letter provides the supplemental information. In addition, NEDA has determined that an exemption from certain 10 CFR 73.56 regulations is no longer necessary. As such, this supplement supersedes and replaces the exemption request provided in Reference 1.

NEDA estimates the exemption will become necessary by July 31, 2020 but may request emergency processing should a specific case arise that challenges regulatory compliance. The exemption would be in effect for no later than ninety (90) days after the PHE is ended or December 31, 2020, whichever occurs first.

Should you have any questions regarding this submission, please contact Mr. Mike Davis, Licensing Manager, at 319-851-7032.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dean Curtland".

Dean Curtland
Site Director
NextEra Energy Duane Arnold, LL

Enclosure - Access Authorization/Fitness for Duty Exemption Request Supplement

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cc: USNRC Regional III Administrator
USNRC Project Manager, Duane Arnold Energy Center
USNRC Senior Resident Inspector, Duane Arnold Energy Center
State of Iowa, Public Health

1.0 SUMMARY DESCRIPTION

In Reference 8.1, NextEra Energy Duane Arnold, LLC (NEDA) requested an exemption from certain access authorization and fitness-for-duty requirements of 10 CFR 26 and 10 CFR 73.56 due to isolation activities (e.g., social distancing) in effect at the Duane Arnold Energy Center (DAEC) in response to the COVID-19 public health emergency (PHE). During a public meeting (Reference 8.2), NEDA agreed to supplement the exemption request with information detailing the requirements within the regulations warranting an exemption, the reason(s) the requirements cannot be met and the compensatory measures and/or controls that will be in effect during the requested exemption period.

NEDA has determined that an exemption from certain 10 CFR 73.56 regulations is no longer necessary. As such, this supplement supersedes and replaces the exemption request provided in Reference 8.1. NextEra estimates the exemption will become necessary by July 31, 2020 but may request emergency processing should a specific case arise that challenges regulatory compliance. The exemption would be in effect for no later than ninety (90) days after the PHE is ended or December 31, 2020, whichever occurs first.

2.0 BACKGROUND

In an April 27, 2006 NRC Pandemic Flu workshop (Reference 8.3), participants determined that nuclear power plants would likely need to process a large number of requests for enforcement discretion or exemptions from NRC requirements. Subsequently NEI published a Pandemic Licensing Plan in 2007 (Reference 8.4) that provided a listing of regulations which, in a pandemic, licensees should review and determine if an exemption is required. NEDA has reviewed the recommended regulation listing and determined that exemptions are required as described herein.

3.0 EXEMPTION DETAILS

For plant personnel performing duties described in 10 CFR 26.4, as appropriate, NEDA anticipates not being able to meet the access authorization and fitness-for-duty requirements of 10 CFR 26 as indicated in the table below. The exemptions would authorize flexibility in managing DAEC activities by allowing alternative controls which provide reasonable assurance that individuals are trustworthy and reliable and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause for the duration of the PHE. NEDA will develop an exemption policy that delineates when and how exemptions would be invoked and who has authority to approve their use. Upon NRC approval, NEDA will continue to operate under current guidance unless or until such exemptions are exercised. At that time, NEDA will suspend the applicable requirements at DAEC in accordance with the limitations and controls as specified below, until no later than ninety (90) days after the COVID-19 PHE has ended or December 31, 2020, whichever occurs first.

Regulation Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.165(b)(5)	MRO Timeliness Requirement, Testing at a 2nd HHS-certified Lab	COVID-19 actions and impacts could affect MRO, MRO staff, laboratory or donor(s).

Based upon AA/FFD staff judgment and experience, NEDA requests two (2) additional business days as a result of the specified time frames within the current regulation potentially being overly restrictive for the laboratory personnel due to the COVID-19 PHE.

- If a laboratory's business operations are affected by COVID-19 and staffing is limited, one (1) business day may not be enough for the lab to have the appropriate personnel go to the lab and forward Bottle B to the lab of the donor's choice.
- NEDA will continue to adhere to current requirements until such time the lab is unable to meet current time frames. At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into the Corrective Action Program (CAP) for tracking.
 - Specific cases will be tracked within the FFD program
- NEDA will resume compliance with the current requirements as soon as lab can meet the time frames.

Regulation Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.185(d)(3)	MRO Timeliness Requirement, Donor Contact	COVID-19 actions and impacts could affect timely MRO contact with the individual.

Based upon AA/FFD staff judgment and experience, NEDA requests two (2) additional days as a result of the specified time frames within the current regulation potentially being overly restrictive for the MRO in reaching the donor, especially on pre-access tests, etc., due to the COVID-19 PHE.

- If the test results are for an individual currently badged (e.g. random, etc.) this should not be an issue,
- If it is a pre-access test for example, the MRO may have difficulty in reaching the donor if the donor is sequestered where they are unreachable,
- The two (2) additional days will allow for greater flexibility in reaching the donor in an effort to ensure all avenues have been exhausted in reaching the donor.
- NEDA will continue to adhere to the current requirements for maintaining Unescorted Access Authorization/Unescorted Access (UAA/UA).
- NEDA will continue to adhere to the current requirements until such time that an individual is unreachable as a result of being sequestered. At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into the CAP for tracking.
 - Specific cases will be tracked within the FFD program
- NEDA will resume compliance with the current requirements as soon as practical.

Regulation Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.185(p)	MRO Timeliness Requirement, Results Review	COVID-19 actions and impacts could affect timely documentation and restoration of compliance after receiving the laboratory test result.

Based upon AA/FFD staff judgment and experience, NEDA requests five (5) additional business days as a result of the specified time frames within the current regulation potentially being overly restrictive for the MRO due to the COVID-19 PHE.

- If the MRO was unable to reach the donor in accordance with 10 CFR 26.185(d)(3) as seen above (requesting new total of three (3) days), this will have a direct impact upon this requirement.
- NEDA will continue to adhere to current requirements, especially for those maintaining UAA/UA and for those covered by the FFD program.
- NEDA will continue to adhere to current requirements until such time an individual is unreachable as a result of being sequestered.
- At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into the CAP for tracking.
 - Specific cases will be tracked within the FFD program.
- NEDA will resume compliance with the current requirements as soon as practical.

Regulations Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.169(a)	HHS-Certified Laboratory Test Results	COVID-19 actions or impacts could prevent laboratory from meeting requirement because of minimum staffing or COVID-19 testing priorities.

NEDA requests that the laboratory be allowed to “test as soon as reasonably practical” as a result of the specified time frames within the current regulation potentially being overly restrictive for the laboratory personnel due to the COVID-19 PHE.

- HHS certified laboratories are already required to have contingency plans available, this request is for circumstances beyond our control.
- If a laboratory’s business operations are affected by COVID-19 and staffing is limited, five (5) business days may not be enough for the lab to have the appropriate personnel go to the lab for completing the testing process and comply with this requirement.
- In the event the test is for a For-Cause or Follow-Up testing, the individual’s site access badge will be placed on hold.
- NEDA will continue to adhere to current requirements until such time the lab is unable to meet current time frames. At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into the CAP for tracking.
 - Specific cases will be tracked within the FFD program.
- NEDA will resume compliance with the current requirements as soon as the lab can meet the time frames.

Regulations Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.119(a)	Shy Bladder Determinations	COVID-19 actions or impacts could affect ability to meet the five (5) day requirement for medical exam and documentation to the MRO.

Based upon AA/FFD staff judgment and experience, NEDA requests an additional ten (10) calendar days as a result of the specified time frames within current regulation potentially being overly restrictive for obtaining an evaluation due to the COVID-19 PHE.

- If licensed physicians are unavailable due to practices being shut down or seeing patients on a limited basis, five (5) business days will not be enough time to meet this requirement.
- Individuals are able to utilize personal physicians as the NEDA MRO does not perform these evaluations. Results are reviewed by the MRO and as needed, discussed with the individuals' physician for the final FFD decision.
- NEDA will continue to adhere to current requirements until such time licensed physicians are verified as being unable to meet current time frames. At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into the CAP for tracking.
 - Specific cases will be tracked within the FFD program.
- NEDA will resume compliance with the current requirements as soon as the licensed physicians can meet the time frames.

Regulations Requiring Exemption	Description	Exemption Request Basis
10 CFR 26.189(c)	Determination of Fitness – For Cause	COVID-19 actions or impacts could affect capability to conduct face-to-face evaluations for a Determination of Fitness.

NEDA requests alternate electronic means for the fitness determinations as a result of the current regulation for face-to-face evaluations potentially being overly restrictive due to the COVID-19 PHE.

- If licensed professionals are unavailable due to practices being shut down, refuse in-person visits or seeing individuals on a limited basis, face-to-face evaluations/interactions may not be available in order to meet this requirement.
- FFD staff trained in Behavior Observation will relay the individual's condition to the licensed professional conducting the evaluation for a first-hand observation. This will ensure the licensed professional has all the available information in making the evaluation decision.
- NEDA will continue to adhere to current requirements until such time licensed professionals are verified as being unable to meet face-to-face and in a timely manner. At that time, this exemption would be exercised:
 - If exercised, the actual exemption will be placed into CAP for tracking.
 - Specific cases will be tracked within the FFD program.
- NEDA will resume compliance with the current requirements as soon as the licensed physicians can meet the time frames.

4.0 TECHNICAL JUSTIFICATION OF ACCEPTABILITY

The U.S. Centers for Disease Control (CDC) has issued recommendations advising “social distancing” to reduce the spread of the COVID-19 Virus (Reference 8.5). At DAEC, NEDA has implemented self-quarantining, group size limitations and social distancing to protect required site personnel in accordance with NEI 06-03, Pandemic Threat Planning, Preparation, and Response Reference Guide (Reference 8.6). Ideally, these activities will limit the spread of the COVID-19 virus among the station staff. However, implementation will require exemptions to the access authorization and fitness-for-duty requirements of 10 CFR 26, as listed in Section 3.0, since the isolation activities restrict personnel from performing certain activities. Maintaining a healthy onsite-workforce is preferable to a workforce that is unavailable during the pandemic.

Due in part to the nature of the COVID-19 pandemic, isolation activities lasting longer than several weeks are expected. In accordance with NEDA's Pandemic Response Plan, an extended

recovery period will likely follow. Thereby, NEDA will restore full compliance with 10 CFR 26 within ninety (90) days after the PHE is ended or December 31, 2020, whichever occurs first.

5.0 JUSTIFICATION OF EXEMPTION

10 CFR 26.9, Specific Exemptions, states that the NRC may grant exemptions from the regulations therein provided the following conditions are met:

- (1) The exemptions are authorized by law.
- (2) The exemptions will not endanger life or property or the common defense and security.
- (3) The exemptions are otherwise in the public interest.

NEDA has evaluated the requested exemption against the 10 CFR 26.9 criteria for specific exemptions and has determined that each are satisfied as described below.

- (1) The exemption is authorized by law

Access authorization and fitness-for-duty requirements in 10 CFR 26 are not required by any statute. The requested exemption is authorized by law given that no law precludes the activities covered by this exemption request. Granting of the request does not result in a violation of the Atomic Energy Act of 1954, as amended,

- (2) The exemption will not endanger life or property or the common defense and security.

The requested exemptions will not endanger life or property or the common defense and security. The requested exemptions are one-time exemptions to allow temporary relief from access authorization and fitness-for-duty requirements of 10 CFR 26, as listed in Section 3.0 of this exemption request. These exemptions serve the public interest by implementing isolation activities and controls which assure the health and availability of essential DAEC staff during the COVID-19 pandemic.

The proposed exemptions are related to access authorization and fitness-for-duty requirements and do not change physical security plans or the defensive strategy. NEDA will continue to meet all other access authorization and fitness-for-duty requirements not listed in Section 3.0. Therefore, granting the exemption request will not endanger or compromise the common defense or security, or safeguarding of DAEC.

- (3) The exemption is otherwise in the public interest.

NEDA's pandemic response plan is based on NEI 06-03, Pandemic Threat Planning, Preparation, and Response Reference Guide (Reference 8.6) which recommends isolation strategies such as sequestering, use of super crews or minimum staffing as applicable, social distancing, group size limitations, and self-quarantining in an event of a pandemic. NEI 06-03 provides other mitigation strategies that serve the public interest during a pandemic by assuring adequate staff are isolated from the pandemic and remain healthy and available to perform their job function(s).

DAEC operation during the pandemic supports the public need for a reliable source of electricity to cope with the COVID-19 pandemic. The electric grid, including nuclear plant operation, comprise the nation's critical infrastructure similar to the medical, food and communications industries. Compliance with certain access authorization and fitness-for-duty requirements impair DAEC implementation of the CDC recommendations (social distancing, group size limitations, self-quarantining etc.) which minimize the spread of COVID-19, thereby challenging safe and reliable operation. Without implementing the CDC recommended activities, DAEC could be forced to shut down and possibly maintain

the plant in a shutdown condition for the duration of the pandemic. Maintaining DAEC in a shutdown condition for the duration of the pandemic would not serve the public interest in providing a reliable source of baseload electrical power.

6.0 CONCLUSION

As demonstrated above, the exemption request is in accordance with the specific exemption criteria of 10 CFR 26.9. Specifically, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. As such, a temporary exemption from the identified sections of 10 CFR 26 at DAEC is justified during and upon recovery from the COVID-19 PHE.

7.0 ENVIRONMENTAL ASSESSMENT

NEDA requests an exemption from certain access authorization and fitness-for-duty requirements of 10 CFR 26 at DAEC. Specifically, the exemption is necessary from the 10 CFR 26 requirements listed in Section 3.0 of this exemption request, through the period that COVID-19 related activities are in effect and an additional transition period of ninety (90) days after the PHE is ended or December 31, 2020, whichever occurs first.

NEDA has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirements for which an exemption is being requested involve access authorization and fitness-for-duty requirements. Accordingly, the proposed exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the proposed exemption.

8.0 REFERENCES

- 8.1 Exemption Request for Access Authorization and Fitness for Duty Requirements due to COVID-19 Pandemic, May 21, 2020 (ADAMS Accession No. ML20142A192)
- 8.2 Notice of Meeting with NextEra Energy/Florida Power & Light Company Regarding Exemption Requests Regarding Access Authorization and Fitness for Duty Requirements Due to COVID-19, June 3, 2020 (ADAMS Accession No. ML20155K885)
- 8.3 USNRC Office of Nuclear Security and Incident Response - Sustaining Safe Nuclear Operations in an Influenza Pandemic, Summary of NRC Pandemic Flu Workshop Held on April 27, 2006 (ADAMS Accession Number ML061740190).
- 8.4 Nuclear Energy Institute White Paper, Pandemic Licensing Plan, January 2007 (ADAMS Accession No. ML070470653)
- 8.5 Centers for Disease Control and Prevention, Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19); retrieved from <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>, March 17, 2020
- 8.6 Nuclear Energy Institute (NEI) 06-03, Pandemic Threat Planning, Preparation, and Response Reference Guide, Revision 2, February 2020