



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

July 21, 2020

David L. Bushnell, M.D., Chair
National Radiation Safety Committee
Department of Veterans Affairs
National Health Physics Program (115 HP/NLR)
Veterans Health Administration
2200 Fort Roots Drive
North Little Rock, AR 72114

SUBJECT: AUTHORIZATION TO GRANT TEMPORARY EXEMPTIONS FROM U.S.
NUCLEAR REGULATORY COMMISSION REGULATIONS, TITLE 10 CODE
OF FEDERAL REGULATIONS TO PERMITTEES

Dear Dr. Bushnell:

By letter dated June 5, 2020, Agencywide Documents Access and Management System [ADAMS] Accession No. ML20161A360, the Department of Veterans Affairs (DVA), the licensee, requested authority under Title 10 of the *Code of Federal Regulations* (10 CFR) 30.11(a) to grant temporary exemptions to its permittees. The licensee holds a Master Materials License (MML) which authorizes it to implement its own internal inspection and permitting programs under the conditions outlined in the Letter of Understanding (LOU) between the DVA and the U.S. Nuclear Regulatory Commission (NRC) for the License No. 03-23853-01VA dated June 16, 2014 (ML14197A320). These programs are implemented by the National Health Physics Program (NHPP) within the DVA under the authority of the licensee's National Radiation Safety Committee (NRSC). Item 5.a. of the LOU states that "[t]he DVA will not take or authorize the following actions without specific NRC authorization: Grant exemptions to NRC regulations."

In its request, the licensee indicated that due to the COVID-19 public health emergency (PHE), certain permit requirements might not be met without increasing the risk of exposing NHPP staff, its permittees' staff and patients, and members of the public to the virus that causes COVID-19. The DVA outlined how it would grant exemptions, using the NRC's temporary exemption templates for materials and medical use licensees (Material Licensee Generic Exemptions During the Emergency Caused by the COVID-19 Pandemic, last updated on May 7, 2020 (ML20133K132); Medical Licensee Temporary Exemptions During the Emergency Caused by the COVID-19 Pandemic, last updated on May 8, 2020 (ML20129K060)). The DVA stated that it would grant temporary exemptions to permittees on a case-by-case basis and not apply them to all permittees (i.e., the DVA would not issue "blanket" exemptions). The DVA further indicated that it would only grant exemptions for a 90-day period, with the possibility of extending the exemption for a second 90-day period, with no exemption period extending beyond the end of calendar year 2020. Exemptions granted would be reported to the NRSC quarterly and records of the exemptions granted would be maintained by NHPP for NRC inspection purposes.

The NRC notes that the temporary exemptions that DVA has requested authorization to grant to its permittees are those that the NRC has previously reviewed. The NRC has found these temporary exemptions to be warranted in situations where the PHE makes compliance with NRC requirements uniquely challenging and, absent the temporary exemption, a licensee might be required to take actions that might be contrary to guidance on preventing the spread of the virus that causes COVID-19. The NRC has found that these temporary exemptions, as described in the templates and granted to licensees as warranted, would not endanger life or property or the common defense and security and are otherwise in the public interest. The NRC notes that nearly all DVA's permittees are medical use permittees and recognizes that DVA's permittees might encounter uniquely challenging circumstances during the PHE that might warrant the issuance of temporary exemptions. The NRC finds that DVA, as an MML with oversight responsibilities for mostly medical use permittees, is positioned to efficiently evaluate its permittees' unique circumstances during the PHE and issue temporary exemptions in accordance with the NRC's templates. The DVA requested authorization to report exemptions to the NRSC on a quarterly basis, but the NRC finds that the exemptions should be reported to the NRSC more frequently. More frequent reporting will ensure that the NRSC is apprised of exemptions and able to address any concerns it has with any exemptions in a timely manner. The NRC finds that the DVA's proposed plan for maintaining records of the temporary exemptions is adequate to facilitate NRC inspection of the exemptions. Therefore, the NRC staff finds that the requested authorization will not endanger life or property or the common defense and security and is otherwise in the public interest.

Based on the above findings, the NRC authorizes the DVA to grant exemptions to its permittees as follows:

From the date of this letter to December 31, 2020, the licensee is authorized to grant temporary exemptions to its permittees in accordance with the "Material Licensee Generic Exemptions During the Emergency Caused by the COVID-19 Pandemic," last updated on May 7, 2020 (ML20133K132) and "Medical Licensee Temporary Exemptions During the Emergency Caused by the COVID-19 Pandemic," last updated on May 8, 2020 (ML20129K060), and any updates to these templates that the NRC might issue. The licensee may grant these temporary exemptions on a case-by-case basis. The licensee must document each temporary exemption and the justification for granting the exemption for each permittee for future review and inspection by the NRC. Exemptions must be reported to the NRSC as they are approved by the NHPP. The licensee may not grant exemptions to multiple or all permittees as "blanket" exemptions without written consent from the NRC. The duration of each exemption may not exceed 90-days. The licensee may grant a second exemption for a period of no more than 90-days with a second documented justification. No exemption period may extend beyond December 31, 2020, without written consent from the NRC. The licensee may not issue retroactive exemptions.

An environmental assessment for this action is not required, because this action is categorically excluded under 10 CFR 51.22(c)(25)(vi)(A)-(G). In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC's Public Document Room or from the NRC's ADAMS, accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html>.

D. Bushnell

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If you have questions, please contact Bryan A. Parker at bryan.parker@nrc.gov or 678-828-7050.

Sincerely,

Robert J. Orlikowski, Chief
Materials Licensing Branch
Division of Nuclear Materials Safety

License No. 03-23853-01VA
Docket No. 030-34325

Letter to David L. Bushnell, M.D. from Robert J. Orlikowski dated July 21, 2020.

SUBJECT: AUTHORIZATION TO GRANT TEMPORARY EXEMPTIONS FROM U.S. NUCLEAR REGULATORY COMMISSION REGULATIONS, TITLE 10 CODE OF FEDERAL REGULATIONS TO PERMITTEES

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