



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

July 29, 2020

Ms. Meagan Nydegger, Chief,
Reactor Operations
National Institute of Standards and Technology
NIST Center for Neutron Research
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Gaithersburg, MD 20899

SUBJECT: NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY – APPROVAL
OF EXEMPTION FROM REQUIREMENTS OF 10 CFR PART 50, APPENDIX E,
SECTION IV.F.2.B RELATED TO BIENNIAL EMERGENCY EXERCISES
[COVID-19]

Dear Ms. Nydegger:

The U.S. Nuclear Regulatory Commission (NRC) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, “Domestic Licensing of Production and Utilization Facilities,” Appendix E, “Emergency Planning and Preparedness for Production and Utilization Facilities,” Section IV.F., “Training,” for the National Bureau of Standards Test Reactor (NBSR). This action is in response to the National Institute of Standards and Technology (NIST, licensee) application dated July 23, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20206K842), as supplemented by letter dated July 24, 2020 (ADAMS Accession No. ML20210M006), related to an NRC letter dated May 14, 2020 (ADAMS Accession No. ML20120A003), describing a process by which the NRC is prepared to grant temporary exemptions from the biennial emergency preparedness exercise requirement.

Specifically, the application, as supplemented, requested temporary exemption from the requirement of 10 CFR Part 50, Appendix E, Section IV.F.2.b. for a biennial emergency preparedness exercise and provided the following information:

- the licensee’s last biennial exercise date;
- the licensee’s current biennial exercise date;
- a statement that the licensee cannot meet the biennial emergency preparedness exercise requirement without workers taking actions that may be contrary to the Centers for Disease Control and Prevention (CDC) and the State of Maryland guidance for responding to the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE);

- a statement that the licensee made a reasonable effort to reschedule the exercise during calendar year (CY) 2020, but was unsuccessful;
- per Regulatory Issue Summary (RIS) 2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," and consistent with similar exemptions granted for issues like hurricanes that have impacted exercise scheduling, a statement that the licensee will reschedule the conduct of the biennial exercise within 35 months from the month in which the previously evaluated exercise was conducted in CY 2018;
- a statement that if an exemption is granted to allow the licensee to conduct the CY 2020 biennial exercise in CY 2021, future biennial exercises will continue to be held as scheduled;
- a statement that the licensee conducted drills, exercises, and other training activities that exercised its emergency response strategies, in coordination with offsite authorities, since the previous biennial exercise; and
- a statement that the rescheduled biennial exercise has been, or will be, coordinated with the applicable offsite response organizations (if offsite response organization participation is required).

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and when special circumstances are present. Special circumstances are present whenever, among other things, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule or the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

10 CFR Part 50, Appendix E, Section IV.F.2.b. requires, in part, that a licensee conduct an exercise of its onsite emergency plan every 2 years. The underlying purpose of the biennial emergency preparedness exercise requirement is to ensure that personnel are familiar with their duties and to test the adequacy of timing and content of implementing procedures and methods. In addition, conduct of the biennial emergency preparedness exercise ensures that the skills of the personnel are maintained and that any weaknesses that may exist in the licensee's emergency planning program are identified and corrected.

The requested temporary exemption from the biennial emergency preparedness exercise requirement would ensure that the licensee engages in activities that do not conflict with practices recommended by the CDC and the State of Maryland to limit the spread of COVID-19.¹ Biennial exercises, particularly those that integrate onsite and offsite performance, typically require the physical presence of numerous individuals in close-quarters with one another, which is inconsistent with the CDC and the State of Maryland recommendation of social distancing.

¹ CDC, "How to Protect Yourself and Others," April 18, 2020 (ADAMS Accession No. ML20125A069); Maryland Department of Health, "Use your head — Slow the spread," <https://coronavirus.maryland.gov/>.

In its application, the licensee provided that it cannot meet the CY 2020 exercise requirement without workers taking actions that would conflict with practices recommended by the CDC and the State of Maryland to limit the spread of COVID-19. The compensatory measures that the licensee stated that it will implement during the exemption term are as follows:

- Follow the recommendation of scheduling an exercise within the 35-month window as described in RIS 2006-003. This exercise will be coordinated with offsite response organizations, as appropriate. Future exercises will be held as scheduled.
- Conduct a tabletop emergency exercise with internal NBSR personnel via a videoconference platform prior to August 1, 2020.

The licensee also provided that the last biennial emergency preparedness exercise was conducted on February 1, 2018. The 35-month window for scheduling the next exercise ends on January 1, 2021. Accordingly, the requested exemption would expire on January 1, 2021, thus extending the due date to conduct the CY 2020 biennial emergency preparedness exercise to January 1, 2021.

The NRC staff has reviewed the requested exemption and determined that it is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The NRC staff has reviewed the requested exemption and determined that it would not adversely affect the emergency response capability of the test reactor facility because all personnel are currently qualified for all tasks and the proposed compensatory measures will maintain their knowledge, skills, and abilities without the conduct of the biennial emergency preparedness exercise during the exemption term. The requested exemption would also allow the affected NIST personnel to continue to be available to perform their functions during the COVID-19 PHE. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

The NRC staff has reviewed the requested exemption and determined that it would provide only temporary relief from the applicable regulation and that the licensee has made good faith efforts to comply with the regulation. Also, based on the licensee conducting a tabletop emergency exercise with internal NBSR personnel via a videoconference platform prior to August 1, 2020, the fact that the CY 2020 biennial emergency preparedness exercise is being postponed, not canceled, and the fact that future biennial exercises will continue to be held as scheduled, the NRC staff determined that application of the regulation in these circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the NRC staff finds that special circumstances are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25) and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of the exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the licensee's safety analyses, or introduce

any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because the exemption does not affect any effluent release limits as provided in the licensee's technical specifications or by the regulations in 10 CFR Part 20, "Standards for Protection Against Radiation." There is no significant increase in individual or cumulative public or occupational radiation exposure because the exemption does not affect limits on the release of any radioactive material or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because the exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analyses. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Based on the above, the NRC has determined that 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 and that special circumstances are present. Therefore, the NRC hereby grants the exemption.

The exemption is effective upon issuance until January 1, 2021.

Sincerely,

/RA/

Mohamed Shams, Director
Division of Advanced Reactors and Non-Power
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Docket No. 50-184

cc: See next page

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ADAMS Accession Nos.: ML20209A326***via e-mail****NRR-048**

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