



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

March 28, 2020

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION PLANNED ACTIONS RELATED TO THE REQUIREMENTS FOR WORK HOUR CONTROLS DURING THE CORONAVIRUS DISEASE 2019 PUBLIC HEALTH EMERGENCY

Dear Dr. Uhle:

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. As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the U.S. Nuclear Regulatory Commission (NRC), and its regulated entities. In all of our actions, we are committed to following the NRC's Principles of Good Regulation (independence, openness, efficiency, clarity, and reliability) while performing our mission. In keeping with our principles, this letter provides information regarding the NRC's planned actions related to Title 10 of the *Code of Federal Regulations* (CFR) Part 26 requirements for work hour controls during the COVID-19 PHE. These actions are applicable to operating power reactors licensed under 10 CFR Part 50.

Under the NRC's regulations in 10 CFR 26.9, "Specific exemptions," "Upon application of any interested person or on its own initiative, the Commission may 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 and subject to the terms and conditions outlined in this letter and its attachment, the NRC is prepared to grant, upon request from individual licensees, exemptions from the work hour controls specified in 10 CFR 26.205(d)(1)-(d)(7). If the licensee determines that it cannot meet these terms and conditions or that it needs a different Part 26 exemption, then the licensee must seek separate NRC approval through the normal exemption process.

The objective of the exemptions from 10 CFR 26.205(d)(1)-(7) is to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID-19 PHE on maintaining the safe operation of these facilities. Specifically, if (1) a licensee's staffing levels are affected by the COVID-19 PHE, (2) a licensee determines that it can no longer meet the work-hour controls of 10 CFR 26.205(d)(1)-(d)(7), and (3) the licensee can effect site-specific administrative controls for COVID-19 PHE fatigue-management for personnel specified in

10 CFR 26.4(a), then the licensee should—as soon as practicable and no less than 24 hours before it would be out of compliance with the regulations—notify the NRC in writing that it can no longer meet the requirements of 10 CFR 26.205(d)(1)-(d)(7). The licensee should request that the NRC grant the licensee an exemption from 26.205(d)(1)-(d)(7), and include the following information:

- a statement that the licensee can no longer meet the work-hour controls of 10 CFR 26.205(d) for certain positions;
- a list of positions for which the licensee will maintain current work-hour controls under 10 CFR 26.205(d)(1)-(d)(7);
- the date and time when the licensee will begin implementing its site-specific COVID-19 PHE fatigue-management controls for personnel specified in 10 CFR 26.4(a);
- a statement that the licensee's site-specific COVID-19 PHE fatigue-management controls are consistent with the constraints outlined in this letter and its attachment;
- a statement that the licensee has established alternative controls for the management of fatigue during the period of the exemption and that at a minimum, the controls ensure that for individuals subject to these alternative controls:
 - (1) not more than 16 work-hours in any 24-hour period and not more than 86 work-hours in any 7-day period, excluding shift turnover;
 - (2) a minimum 10-hour break is provided between successive work periods;
 - (3) 12-hour shifts are limited to not more than 14 consecutive days;
 - (4) a minimum of 6-days off are provided in any 30-day period; and
 - (5) requirements are established for behavioral observation and self-declaration during the period of the exemption.

An email to the facility's NRC project manager 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 request. Licensee site-specific documents related to the exemption should be available for inspection.

The NRC will consider these requests on a case-by-case basis and, if the requirements for an exemption are met, will provide written approval of an exemption for a period of 60 days. Licensees should make every effort to submit timely exemption requests. If sufficient time is not available for the NRC to provide prior written approval for the exemption, then the NRC may provide verbal approval if all requirements are met, followed promptly by a written safety evaluation documenting the approval. If the COVID-19 PHE condition does not improve before expiration of the exemption, then the NRC may consider an additional exemption period. If a further exemption is needed, individual licensees should request an extension of the exemption from the NRC before the end of the 60-day period. Licensees must come back into compliance with the 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.

The attachment to this letter provides the regulatory basis, including the specific constraints, for granting these exemptions. This basis, together with the approach outlined above, would allow licensees to utilize the staff resources necessary to ensure that the plant or fuel facility maintains a safe and secure status during the COVID-19 PHE. As shown by this letter and its attachment, the proposed exemption would be authorized by law, would not endanger life or property or the common defense and security, and is otherwise in the public interest.

Should any implementation issues arise during the period of exemption, the NRC may consider other available regulatory options, including additional exemption requests or enforcement discretion, if appropriate. While this letter specifically addresses work hour controls, licensees may identify other issues that need to be addressed. To the extent possible, licensees should consider the information in Regulatory Issue Summary 2010-04, "Monitoring the Status of Regulated Activities During a Pandemic," to address these issues.

If you have any further questions about this matter, please contact your facility's NRC project manager.

Sincerely,

/RA/

Ho K. Nieh, Director
Office of Nuclear Reactor Regulation

Enclosure:
10 CFR Part 26, Subpart I requirements
from which licensees will be exempted

Attachment

Title 10 of the Code of Federal Regulations (CFR) Part 26, Subpart I requirements from which licensees will be exempted:

Exemption: 10 CFR 26.205(d)(1) – (d)(7)

Description: The NRC will grant an exemption from the work hour controls in §§ 26.205(d)(1) through (d)(7). Specifically, licensees will be exempted from the work hour limits of 10 CFR 26.205(d)(1), the minimum break requirements of 10 CFR 26.205(d)(2); the minimum day off requirements of 10 CFR 26.205(d)(3); the unit outage minimum day off requirements of 10 CFR 26.205(d)(4); the unit outage, security outage, and increased threat condition minimum day off requirements of 10 CFR 26.205(d)(5); the outage work hour control requirements of 10 CFR 26.205(d)(6); and the alternative minimum day off requirements of 10 CFR 26.205(d)(7).

Purpose: This exemption provides increased scheduling flexibility to manage conditions resulting from the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) by allowing licensees to control the work hours and manage fatigue of individuals specified in 10 CFR 26.4(a) in accordance with site administrative controls applicable to the period of exemption.

Basis: A sudden and potentially long-term reduction in available facility staffing, such as that which may result due to the COVID-19 PHE, was not considered during the rulemaking that established the 10 CFR 26.205(d) work hour controls. Exemption from this requirement will provide licensees flexibility in management of personnel resources to maintain plant operational safety and security during a period when facility staffing may be reduced due to the COVID-19 PHE. The NRC approval of an exemption request is conditioned, in part, on the licensee establishing alternative controls for the management of worker fatigue that ensure for individuals subject to these alternative controls: (1) not more than 16 work-hours in any 24-hour period and not more than 86 work-hours in any 7-day period, excluding shift turnover, (2) a minimum 10-hour break is provided between successive work periods, (3) 12-hour shifts are limited to not more than 14 consecutive days, (4) a minimum of 6-days off are provided in any 30-day period, and (5) requirements are established for behavioral observation and self-declaration during the period of the exemption. These controls include provisions to address both acute and cumulative fatigue for the limited period of the exemption. Additionally, the requirements of 10 CFR 26.407, "Behavioral observation"; 10 CFR 26.209, "Self-declarations"; and 26.211, "Fatigue assessments" remain in effect during the period of the exemption. These requirements provide reasonable assurance that should personnel become impaired due to fatigue, requirements and processes are in place to identify the impairment through observation by plant staff or by worker self-declaration, and to assess and address instances of impairment through fatigue assessments. The NRC considers the exemption timeframe of 60 days to be reasonable because it provides for a defined, limited period of stability for flexible work hour controls. NRC inspectors are available to periodically review any issues concerning worker fatigue, and the NRC retains the right to rescind any exemptions and/or use enforcement should circumstances warrant.

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Identical letters sent to:

Dr. Jennifer L. Uhle
Vice President, Generation & Suppliers
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Mr. Chris Bakken
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The objective of the exemptions from 10 CFR 26.205(d)(1)-(7) is to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID-19 PHE on maintaining the safe operation of these facilities. Specifically, if (1) a licensee's staffing levels are affected by the COVID-19 PHE, (2) a licensee determines that it can no longer meet the work-hour controls of 10 CFR 26.205(d)(1)-(d)(7), and (3) the licensee can effect site-specific administrative controls for COVID-19 PHE fatigue-management for personnel specified in

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If you have any further questions about this matter, please contact your facility's NRC project manager.

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Purpose: This exemption provides increased scheduling flexibility to manage conditions resulting from the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) by allowing licensees to control the work hours and manage fatigue of individuals specified in 10 CFR 26.4(a) in accordance with site administrative controls applicable to the period of exemption.

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March 28, 2020

Mr. Don Moul
Executive Vice President, Nuclear
Division and Chief Nuclear Officer
Florida Power & Light Company
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Jupiter, FL 33478

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