

## SAFEGUARDS EVALUATION REPORT

DOCKET NO.: 70-143

LICENSE NO.: SNM-124

LICENSEE: Nuclear Fuel Services, Inc.  
Erwin, Tennessee

SUBJECT: REQUEST TO AMEND LICENSE CONDITION SG-3.8

### REQUEST

By letter dated March 11, 2022 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML22073A021), Nuclear Fuel Services, Inc. (NFS or the licensee) submitted a request to amend SNM-124, License Condition SG-3.8. Specifically, due to the impacts of COVID-19 in Erwin, Tennessee, NFS requested an exemption from the requirement in the second paragraph of License Condition SG-3.8 that pertains to the annual observation of a force-on-force (FOF) exercise by the U.S. Nuclear Regulatory Commission (NRC) for calendar year 2021.

### BACKGROUND

By letter dated September 12, 2021 (ADAMS Accession Number ML21260A244), NFS requested an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Paragraph 73.46(b)(9). In that request, NFS requested an exemption from the provisions in 10 CFR 73.46(b)(9) that require routine FOF exercises and an annual observation of an FOF exercise by the NRC. NFS proposed to resume normal operations in the first quarter of 2022.

As a basis for the previously granted exemption request, NFS stated that COVID-19 related local conditions prevented NFS from safely conducting two required FOF exercises, one of which was to be observed by the NRC. In August 2021, the northeast Tennessee region, which includes Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi (where NFS is located), and Washington counties reported a concerning resurgence in new positive COVID-19 tests. The region's hospitals and affected counties also asked for help from the communities to prevent this trend from continuing. The licensee concluded that FOF exercises could not be conducted without unnecessarily increasing the risk of exposing protective force members, on-site support staff, and potentially members of the public, to the COVID-19 virus.

Pursuant to 10 CFR 70.17(a), the NRC reviewed and approved the NFS amendment request. The NRC staff's review is documented in a safeguards evaluation report (SER) dated November 9, 2021 (ADAMS Accession No. ML21294A332). Based on its review, the NRC staff determined that temporarily exempting NFS from the noted requirements for conducting FOF exercises would not endanger life or property or the common defense and security.

By letter dated November 9, 2021 (ADAMS Accession No. ML21294A331), the NRC issued Amendment 16 to Materials License SNM-124. Amendment 16 incorporated into the license the following new License Condition SG-3.8.

*Notwithstanding the requirements of 10 CFR 73.46(b)(9), the licensee is exempt from conducting force-on-force exercises through December 31, 2021; after that date, the licensee shall resume exercises at their regular frequency.*

*Furthermore, the licensee commits to communicating with the NRC to reschedule the annual observed exercise on a mutually agreeable date during the 1st Quarter of calendar year 2022.*

As noted in the second paragraph of License Condition SG-3.8, NFS committed to rescheduling the annual 2021 NRC-observed FOF exercise during the first quarter of calendar year 2022.

#### DISCUSSION – NRC STAFF REVIEW PURSUANT TO 10 CFR 70.17(a)

NFS is seeking an exemption from the requirement in the second paragraph of License Condition SG-3.8 that it hold the annual 2021 NRC-observed FOF exercise during the first quarter of calendar year 2022. In the November 2021 SER approving the previous exemption request, the NRC staff stated that “Should COVID-19 continue to affect the local community into 2022, the NRC would consider an extension to the exemption or amendment based on a subsequent request that updates all the information in the initial request. Based on its review of the provided information and establishment of the noted timeframe to resume the FOF exercises, the NRC staff concludes that granting this exemption request would not endanger life or property or the common defense and security.”

In the letter for its current exemption request dated March 11, 2022, NFS states that it has continuously monitored COVID-19 cases to determine their impact to plant operations. Specifically, the spike in cases associated with the Omicron variant began in late November 2021 and continued until late February 2022. In the second week of January 2022, NFS experienced a peak caseload of more than 100 personnel in quarantine. As the Omicron variant continues into the first quarter of 2022, NFS still has a general safety concern related to conducting FOF exercises.

In its March 11, 2022, license amendment request, NFS informed the NRC that it had recently resumed FOF exercises at the required regulatory frequency, including one FOF exercise in the first quarter of 2022. However, given the continued prevalence of the Omicron variant and the ongoing public health emergency (PHE) NFS continues to take precautions during these exercises. Furthermore, the uncertainty of when the impacts from the PHE will recede both onsite and in the local area have prevented sufficient lead time for NFS and the NRC to establish a mutually agreeable date for an observed exercise to occur by March 31, 2022. Although NFS recently conducted an FOF exercise, due to COVID uncertainties/impacts the licensee was unable to provide NRC with the required 60-day advance notice for the exercise to be observed in accordance with 10 CFR 73.46(b)(9). Instead of trying to “reschedule” the annual 2021 NRC-observed FOF exercise in 2022 as required by license condition SG-3.8, NFS is requesting to be exempted from the requirement for NRC to observe a FOF exercise in 2021. NFS plans to meet the requirements in 10 CFR 73.46(b)(9) going forward.

The NRC staff notes that satisfying the requirements in 10 CFR 73.46(b)(9) is just one element of meeting the general performance objective of establishing and maintaining a physical protection system that provides high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The licensee must still provide a physical protection system that meets the performance capabilities in 10 CFR 73.45, and the physical protection requirements

in other portions of 10 CFR 73.46. During the PHE, the NRC has continued to perform baseline security inspections consistent with Inspection Manual Chapter 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program." As such, the NRC assesses that NFS continues to effectively implement its physical protection plan to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety.

The conduct of a FOF exercise by NFS during the first quarter of 2022 provided training opportunities for its guard forces and allowed the site to assess its ability to challenge the protective strategy against specific design basis threat (DBT) scenarios. NRC staff believe that these exercises play an important role in ensuring the licensee's program has been properly developed and maintains its contingency response readiness if faced with a DBT event. The NRC staff considers it more important that NFS conducted an FOF exercise during the first quarter of 2022 rather than the fact that NRC was not provided an opportunity to observe this FOF exercise during the COVID19 pandemic. The NRC staff further notes that NRC will conduct a graded FOF exercise at NFS in 2022. These triennial exercises utilize an external mock adversary force that will challenge NFS's implementation of its protective strategy and allows the NRC to inspect and assess NFS's contingency response in an integrated manner. Additionally, NRC inspectors have confirmed that FOF exercises have resumed at their normal frequency. Therefore, the NRC staff concludes that it is acceptable to remove the requirement in the second paragraph of License Condition SG-3.8 that pertains to the observation of an FOF exercise by the NRC for calendar year 2021. Furthermore, the NRC staff has determined that the first paragraph of the license condition is no longer needed and should also be removed. The NRC staff concludes that such actions will not decrease the effectiveness of the NFS physical protection program and are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety.

Finally, granting the modification of the previously approved exemption is otherwise in the public interest because it considers public health and safety by following social distancing and assembly restrictions in COVID-19 guidance from Federal and State government agencies. The modification is appropriate to limit the outbreak of COVID-19 and promote public health.

## ENVIRONMENTAL REVIEW

Pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(G), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion, provided that (i) there is no significant hazards consideration; (ii) there is no significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve, as relevant here, scheduling requirements.

For reasons described below, the NFS request meets the criteria for a 10 CFR 51.22(c)(25) categorical exclusion. The licensee is not a power reactor, and this exemption is limited to security exercises, so there are no significant hazards considerations. Because the request by NFS pertains to an exemption from observing a security exercise, there are no effluents or off-site releases or significant increase in radiation exposure to workers or members of the public associated with this request. There are no construction activities associated with this request, so there is no significant construction impact. There is no significant increase in the potential for any radiological accidents associated with this request because an exemption from

NRC observation of the 2021 annual exercise does not affect the facility's operations. Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25)(G), no environmental impact statement or environmental assessment needs to be prepared in connection with the approval of this exemption request.

### CONCLUSION

Based on its review above, the NRC staff concludes that an exemption from NRC observation of the annual FOF exercise for 2021, authorized by the issuance of this amendment, is in compliance with law, will not endanger life or property or the common defense and security, and is in the public interest.

The staff also concludes that granting the exemption is in the public interest. Accordingly, the NRC hereby grants NFS an exemption from the requirements in 10 CFR 73.46(b)(9) pertaining to NRC observation of the annual FOF exercise for 2021.

License Condition SG-3.8 has been deleted to reflect this exemption:

SG-3.8 Deleted per Amendment 17.

### PRINCIPAL CONTRIBUTORS

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