



UNPROTECTED/NON PROTÉGÉ

ORIGINAL/ORIGINAL

CMD: 20-H106

Date signed/Signé le : 10 JUNE 2020/
10 JUIN 2020

Recommendation for a temporary exemption from subsection 9(4) of the *Class I Nuclear Facilities Regulation*

Recommandation d'exemption temporaire du paragraphe 9(4) du *Règlement sur les installations nucléaires de catégories I*

Hearing in writing based solely on written submissions

Audience fondée uniquement sur des mémoires

Scheduled for:
June 2020

Prévue pour :
Juin 2020

Submitted by:
CNSC Staff

Soumise par :
Le personnel de la CCSN

eDocs 6285963 (WORD)

eDocs 6315529 (PDF)

Summary

This CMD pertains to a matter regarding:

- CNSC staff's recommendation for Commission to grant a temporary exemption from the operation of subsection 9(4) of the *Class I Nuclear Facilities Regulation*

The following actions are requested of the Commission:

- accept CNSC staff's recommendation to grant a temporary exemption from the operation of subsection 9(4) of the *Class I Nuclear Facilities Regulations* for a **class of person** until June 30, 2021
- accept the review criteria that the **class of person** shall meet in order to benefit from the exemption and define the **class of person**
- accept CNSC staff's process to be used to confirm the individuals that do benefit from the exemption

Résumé

Le présent CMD concerne une question au sujet de :

- la recommandation du personnel de la CCSN voulant que la Commission accorde une exemption temporaire à l'application du paragraphe 9(4) du *Règlement sur les installations nucléaires de catégorie I*

La Commission pourrait considérer prendre la mesure suivante :

- accepter la recommandation du personnel de la CCSN d'accorder une exemption temporaire à l'application du paragraphe 9(4) du *Règlement sur les installations nucléaires de catégorie I* concernant **une catégorie de personnes** jusqu'au 30 juin 2021
- accepter les critères d'examen que doit respecter la **catégorie de personnes** pour bénéficier de l'exemption, et définir la **catégorie de personnes**
- accepter le processus du personnel de la CCSN qui sera utilisé pour confirmer quelles personnes pourront bénéficier de l'exemption

This page was intentionally left blank.
Page intentionnellement laissée en blanc.

Signed/signé le

10 June 2020/10 juin 2020



G. Frappier

Director General / Directorate of Power Reactor Regulation
Directeur général / Direction de la réglementation des centrales nucléaires

This page was intentionally left blank.
Page intentionnellement laissée en blanc.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	8
1 OVERVIEW.....	9
1.1 Background	9
1.2 Purpose	9
2 MATTERS FOR CONSIDERATION	10
2.1 Regulatory Basis	10
2.2 Technical Basis	11
2.2.1 CNSC staff’s technical assessment of the proposed exemption request.....	12
2.2.2 CNSC staff’s proposed review criteria for exemption requests	13
2.2.3 CNSC staff’s recommendations.....	14
3 OTHER MATTERS FOR CONSIDERATION.....	15
3.1 Environmental Protection Review.....	15
3.2 Indigenous Consultation	15
3.3 Participant Funding Program (PFP) Determination	16
4 OVERALL CONCLUSIONS AND RECOMMENDATIONS.....	16
REFERENCES	17
A. BASIS FOR THE RECOMMENDATIONS	18
A.1 Regulatory Basis	18

This page was intentionally left blank.
Page intentionnellement laissée en blanc.

EXECUTIVE SUMMARY

Due to the COVID-19 pandemic and the escalating compensatory actions that the licensees have taken, the normal Certification Requalification Testing regimen for certified shift workers working at Nuclear Power Plants (NPPs) has been postponed for a short term, resulting in an inability on the part of the licensees to fulfill all of the renewal certification requirements.

As such, licensees are requesting the Commission, pursuant to Section 7 of the *Nuclear Safety and Control Act* (NSCA) and Section 11 of the *General Nuclear Safety Control Regulations* (GNSCR) for relief from the operation of subsection 9(4) of the *Class I Nuclear Facilities Regulation* (CINFR) requirements. This is required in order to ensure that there are sufficient number of certified shift workers to meet minimum shift complement requirements. The temporary exemption will allow the certified shift workers sufficient time to complete their requalification testing requirements.

This CMD evaluates the requests from **all licensees**. The review criteria for the exemption requests are the same for all NPPs. Specifically, CNSC staff are recommending the Commission to:

- accept CNSC staff's recommendation to grant a temporary exemption, from the operation of subsection 9(4) of the CINFR for a **class of person**, until June 30, 2021
- accept the review criteria that the **class of person** shall meet in order to benefit from the exemption, and define the **class of person**
- accept CNSC staff's process to be used to confirm the individuals that do benefit from the exemption

1 OVERVIEW

1.1 Background

In April 2020, licensees requested certain regulatory flexibility in [1, 2 and 3] due to the challenges associated with the COVID-19 pandemic. In order to promote physical distancing and mitigate the spread of the virus, licensees have restricted site access, reduced project work, and reduced in-class personnel training and testing. This include restrictions to:

- training class sizes and enforcement of social distancing
- refresher and control room continuing classroom training
- requalification test practice sessions and simulator based training

The restrictions resulted in the short term postponement of the normal certification requalification testing regiment, resulting in an inability for the licensees to fulfill all of the renewal certification requirements.

As a result, licensees requested in [4, 5 and 6] for an exemption from subsection 9(4) of the CINFR for certified shift workers whose certifications are expiring between July and December 2020, and who have not met the requirements of having completed within the last two years all applicable requalification tests. This CMD considers all licensees' requests. The CMD provides CNSC staff's recommendations for the Commission to grant a temporary exemption from the operation of subsection 9(4) of the CINFR for a **class of person** until June 30, 2021, as defined by the Commission.

The exemption will provide relief to the licensees while ensuring that there are sufficient number of certified shift workers in order to maintain minimum shift complement requirements. It will also provide licensees with sufficient time to implement a recovery plan for the requalification testing program.

CNSC staff note that only a small portion (four at Pickering, thirteen at Bruce A, one at Pt. Lepreau) of the certified shift workers will require this exemption. For the certified shift workers that have met all the requalification testing requirements and have certificates expiring in 2020 (such as certified shift workers at Darlington), the certificates for those individuals will be renewed through the normal regulatory process.

1.2 Purpose

The purpose of this CMD is to provide CNSC staff's assessment regarding the licensees' request for exemption from subsection 9(4) of the CINFR for a **class of person**, including staff's recommendations to the Commission.

The recommendations to the Commission will include the review criteria that define the **class of person** to whom the exemption will apply.

This CMD evaluates the requests from **all licensees**. The review criteria (further discussed in Section 2.2.2 of this CMD) for the exemption requests are the same for all NPPs. In effect, the Commission decision will define the **class of person** benefitting from the exemption as the persons that meet the review criteria.

2 MATTERS FOR CONSIDERATION

2.1 Regulatory Basis

The regulatory basis for personnel certification is described in this subsection.

Persons working in positions that have a direct impact on nuclear safety at a Nuclear Power Plant (NPP), as identified in the Power Reactor Operating Licences (PROLs), must be certified in accordance with Section 9 of the Class I Nuclear Facilities Regulations (CINFR).

As prescribed in subsection 9(4) of the CINFR, a certificate expires five (5) years after the date of the issuance or renewal, and maybe renewed if the person has met the requirements in subsection 9(3) of the CINFR, specifically, the person: has safely and competently performed the duties of the position for which the person was certified, continues to receive the applicable training, has successfully completed the applicable requalification tests, and in the opinion of the licensee, capable in performing the duties of the position.

[CNSC REGDOC-2.2.3, Personnel Certification, Volume III: Certification of Persons Working at Nuclear Power Plants](#) defines the requirements regarding the certification of persons who work at NPPs in positions that have a direct impact on nuclear safety such as shift supervisors or reactor operators. The requirements related to requalification testing are detailed in Section 33 of REGDOC-2.2.3 Volume III, Requalification Tests, as follows:

“During the period of certification, each reactor operator, unit 0 operator, control room shift supervisor and plant shift supervisor shall complete the written and simulator-based requalification tests referred to in the NPP licence.”

The NPP licence condition handbooks provide further details on the requirements for requalification testing, specifically they refer to Section 9.2 (written test) and Section 10.1.2 (simulator-based test) of CNSC Regulatory Document [Requirements for the Requalification Testing of Certified Shift Personnel at Nuclear Power Plants](#) which state:

Section 9.2: “Each certified person shall successfully complete at least one written requalification test during the period of certification. A person must have successfully completed such a test within the two years prior to the date of the licensee’s request for renewal of the person’s certification.”

Section 10.1.2: “(a) Each Authorized Nuclear Operator (ANO) shall successfully complete at least one comprehensive simulator test (CST) as lead ANO during the period of certification. An ANO must have successfully completed such a test within the two years prior to the date of the licensee’s request for renewal of the person’s certification.

(b) Each Unit 0 (U0) Control Room Operator (CRO) shall successfully complete at least one CST as lead U0 CRO during the period of certification. A U0 CRO must have successfully completed such a test within the two years prior to the date of the licensee’s request for renewal of the person’s certification.

(c) Each Shift Manager (SM), Control Room Shift Supervisor (CRSS) and Control Room Shift Operating Supervisor (CRSOS) shall successfully complete at least one CST and one Diagnostic Simulator Test (DST) during the period of certification. A certified supervisor must have successfully completed one CST or one DST within the two years prior to the date of the licensee’s request for renewal of the person’s certification.”

2.2 Technical Basis

As described in Section 1 of this CMD, the normal certification requalification testing regimen was postponed due to the COVID-19 pandemic, resulting in the inability of certified shift workers to fulfil the requalification requirements of subsection 9(3)(c) of the CINFR prior to the expiry of their certification, which states that:

certification of personnel may be renewed “... after receiving from a licensee an application stating that the certified person (c) has successfully completed the applicable requalification tests referred to in the licence for renewing the certification.”

As a result, licensees are requesting a temporary exemption from the expiry of their certificates. Based on the requests, CNSC staff are recommending the Commission, pursuant to Section 7 of the *Nuclear Safety and Control Act* (NSCA) and Section 11 of the *General Nuclear Safety Control Regulations*, to grant a temporary exemption from the operation of subsection 9(4) of the CINFR, which stipulates that “a certification expires five years after the date of its issuance or renewal” for a **class of person**. Specifically, in this context, the **class of person** refers to for certified shift workers whose certifications have an expiry date between July to December 2020 and who have not met the requirement of

having completed, within the last two years all applicable requalification tests. The following subsections of this CMD provide:

- Section 2.2.1 – CNSC staff’s technical assessment of the proposed exemption request.
- Section 2.2.2 – CNSC staff’s proposed review criteria for exemption requests.
- Section 2.2.3 – CNSC staff’s recommendations.

2.2.1 CNSC staff’s technical assessment of the proposed exemption request

CNSC staff performed an evaluation [9] of the licensees’ proposed exemption requests and their impact on safe operations of the NPP. The following factors were considered in CNSC staff’s assessment:

- Duration of the exemption request
- Number of certified personnel for whom the licensees are requesting an the exemption in comparison to the total number of currently certified personnel
- Number of shifts performed by the affected certified person in the last six months, and the predicted number of shifts that will be performed over the next six months

Based on the information provided by the licensees and CNSC staff’s assessment of the data that was provided, CNSC staff conclude that:

- the affected certified shift workers have completed sufficient number of shifts in the last six (6) months, and are likely to maintain those numbers over the next six (6) months
- the requested exemptions only affect a very small number of certified shift workers
- most shifts will be performed by crews of individuals that meet all the requirements of the certification program, and that the affected certified shift workers are performing their shift duties as part of a larger shift crew composed mainly of certified staff meeting all of CNSC’s requirements
- licensees have well-established programs and processes in place to ensure that the workers will continue receive on-the-job training and remain qualified to perform their duties during the affected period

Therefore, a temporary exemption from the operation of subsection 9(4) of the CINFR, until June 2021, will have a minimal impact on the safe operations of the affected plant and that the impact to worker competency is low. It is CNSC staff’s view that the request meets all the requirements set out in section 11 of the *General Nuclear Safety and Control Regulations* (GNSCR) and the exemption will not:

- pose an unreasonable risk to the environment or the health and safety of persons

- pose an unreasonable risk to national security; or
- result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

The proposed temporary exemption until June 2021 will allow the certified shift workers sufficient time to complete their requalification testing requirements, while also respecting measures in place to mitigate risks posed by the pandemic.

2.2.2 CNSC staff's proposed review criteria for exemption requests

CNSC staff identified the following review criteria that the **class of person** shall meet in order to benefit from the exemption. For each criteria, licensees will need to provide supporting information identified in Table 1.

- (a) General criteria – The exemption shall only be applied to certified shift workers with their certifications expiring between July and December 2020, and who have not met the requirements of having completed, within the last two years: a written requalification test, a CST or a DST. The following positions are considered certified shift workers:
- reactor operator (authorized nuclear operator)
 - unit 0 operator
 - control room shift supervisor
 - plant shift supervisor (shift manager)
- (b) Requalification test criteria – The licensee shall demonstrate that certified shift workers have been recently exposed to a testing environment in a classroom or in a simulator.
- (c) Operational performance criteria – The licensee shall demonstrate that certified shift workers have maintained their competency to perform the duties of their certified position.
- (d) Continuing training criteria – The licensee shall demonstrate that certified shift workers have completed continuing training.

Table 1: Review criteria and supporting information required from licensees

Review criteria	Supporting information required from licensees
(a) General	Name of certified shift worker, station and certified position
	Date of certificate expiry
	Requalification tests status
(b) Requalification Test	If the individual is missing a written test, the licensee shall provide the test checkout number and date of the latest formal knowledge evaluation. This information overlaps with the continuing training criteria listed in (d).
	If the individual is missing a simulator-based test, the licensee shall provide the date of the latest simulator-based test as a participant and the role taken during the test.
(c) Operational Performance	A record of the number of shifts performed over the last year and the description of the certified worker's assignment in case the individual has been assigned to an operationally focused position.

Review criteria	Supporting information required from licensees
	Description of operational assignment (if applicable)
	Any event reports and remedial training associated with the individual's performance issues and the corrective action plan implemented as a result of the event report.
	Attestation of competence from the licensee
(d) Continuing Training	For knowledge evaluations: the test checkout numbers and dates of the evaluations in the last two (2) years.
	For simulator-based evaluations: the event type, role and dates of the evaluations in the last two (2) years.

2.2.3 CNSC staff's recommendations

This section provides CNSC staff's recommendations.

CNSC staff recommendation #1: Commission grant a temporary exemption from the operation of subsection 9(4) of the CINFR for a **class of person** until June 2021

Section 7 of the NSCA provides the authority that "*the Commission may, in accordance with the regulations, exempt any activity, person, **class of person** or quantity of a nuclear substance, temporarily or permanently, from the application of this Act or the regulations or any provision thereof.*"

For the purposes of the power under section 7 of the NSCA, the Commission is required to consider section 11 of GNSCR which states:

"For the purpose of section 7 of the Act, the Commission may grant an exemption if doing so will not
(a) pose an unreasonable risk to the environment or the health and safety of persons;
(b) pose an unreasonable risk to national security; or
(c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed."

CNSC staff conclude that the granting of the exemption meets the requirements set out under section 11 of the GNSCR and will not:

- (a) pose an unreasonable risk to the environment or the health and safety of persons;
- (b) pose an unreasonable risk to national security; or
- (c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Therefore, CNSC staff are recommending the Commission to grant, pursuant to section 7 of the NSCA, a temporary exemption, from the operation of subsection 9(4) of the CINFR for a **class of person**, until June 30, 2021.

CNSC staff recommendation #2: Commission acceptance of review criteria that the **class of person** shall meet in order to benefit from the exemption, and define the class of person

The review criteria from subsection 2.2.2 of this CMD will be used to confirm that an individual falls within a **class of person**. CNSC staff recommend that the Commission define the **class of person** benefitting from the exemption as the persons that have met the review criteria.

CNSC Recommendation #3: Commission acceptance of process used to confirm the individuals that do benefit from the exemption

If, in the opinion of the Commission that CNSC staff's above recommendations are acceptable and the exemption is grant, CNSC staff recommend that the Commission accept the following confirmation process:

1. CNSC staff, will review the supporting information once submitted by the licensees, against criteria identified in Table 1, Section 2.2.2 of this CMD, and confirm the list of personnel certifications concerned by the exemption against the definition of the **class of person**.
2. Based on findings from step #1 above, CNSC staff will administer a formal correspondence to the licensees. The correspondence will be issued by CNSC staff for each respective NPP. The correspondence will confirm the considered certified shift workers that do benefit from the exemption.
3. The licensees will be required to provide a recovery plan of their requalification testing program, and an updated requalification and initial examination testing schedule within the next three (3) months (i.e., three (3) months from the time of the Commission's decision).

3 OTHER MATTERS FOR CONSIDERATION

3.1 Environmental Protection Review

CNSC staff have reviewed the request under the NSCA and concluded that, given the administrative nature of the proposed request, there are no impacts to the environment.

3.2 Indigenous Consultation

The common law duty to consult with Indigenous peoples applies when the Crown contemplates actions that may adversely affect potential or established Indigenous and/or treaty rights. Given that the proposed exemptions are administrative in nature and will not result in changes to the physical footprints of the sites, they are not likely to cause adverse impacts to any Indigenous and/or treaty rights. Therefore, based on the information provided by in the application,

CNSC staff have determined that the duty to consult does not arise in relation to the proposed exemptions. In the interest of building and maintaining relationships with Indigenous peoples, CNSC staff will be open to answering any questions about the proposed exemptions should any Indigenous groups express interest.

3.3 Participant Funding Program (PFP) Determination

As the requested Commission proceeding is a panel of one with no written or oral interventions from Indigenous groups and members of the public, it is CNSC staff's determination that no participant funding be offered. However, should the format of the proceeding change, CNSC staff will re-evaluate this determination.

4 OVERALL CONCLUSIONS AND RECOMMENDATIONS

It is CNSC staff's conclusion that the temporary exemption from the operation of subsection 9(4) of the CINFR for a **class of person** until June 30, 2021, if granted by the Commission, will not:

- (a) pose an unreasonable risk to the environment or the health and safety of persons;
- (b) pose an unreasonable risk to national security; or
- (c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed

Therefore, CNSC staff submit to the Commission the following recommendations:

- Recommendation #1: Accept CNSC staff's recommendation for the Commission to grant, pursuant to section 7 of the NSCA, a temporary exemption, from the operation of subsection 9(4) of the CINFR for a **class of person**, until June 30, 2021
- Recommendation #2: Accept the review criteria that the class of person shall meet in order to benefit from the exemption, and for the Commission to define the **class of person**
- Recommendation #3: Accept CNSC staff's process to be used to confirm the individuals that do benefit from the exemption

REFERENCES

1. Bruce Power Letter, M. Burton to G. Frappier, “Bruce Power request for CNSC Regulatory Flexibility Due to COVID-19 Pandemic”, April 14, 2020, BP-CORR-00531-00454, eDocs 6277182.
2. OPG Letter, S. Granville to G. Frappier, “Pickering NGS and Darlington NGS: Request for CNSC Regulatory Flexibility Due to COVID-19 Pandemic”, April 9, 2020, N-CORR-00531-20164, eDocs 6277169.
3. NB Power Letter, M. Power to G. Frappier, “Request for CNSC Regulatory Flexibility Due to COVID-19 Pandemic”, April 14, 2020, TU 06384, eDocs 6278018.
4. Bruce Power Letter, M. Burton to M. Leblanc, “Request for short-term extensions to all Personnel Certifications for the Bruce Nuclear Generating Station A expiring in 2020”, April 24, 2020, BP-CORR-00531-00419, eDocs 6285286.
5. OPG Letter, M. Knutson to M. Leblanc, “Pickering NGS: Request for Exemption from Class I Nuclear Facilities Regulations”, P-CORR-00531-06009, eDocs 6290130.
6. NB Power letter, M. Power to M. Leblanc, “Request for Short-term Extensions to Personnel Certifications for Point Lepreau Nuclear Generating Station expiring in 2020”, May 5, 2020, TU 06374, eDocs 6292502. *** Contains Confidential Information – PROTECTED A, Personal Information*.**
7. Attachment A to [4], “Details to support short term extensions of Bruce Nuclear Generating Station A personnel certifications expiring in 2020”, eDocs 6285285. ***Contains Confidential Information – PROTECTED A, Personal Information*.**
8. Attachment 1 to [5], “Pickering Certified Staff”, eDocs 6290145. ***Contains Confidential Information – PROTECTED A, Personal Information*.**
9. CNSC Memo, J-B. Robert to K. Lun, “All licensees – Exemption from Section 9(4) of the *Class I Nuclear Facilities Regulations*”, May 26, 2020, eDocs 6300402. ***Contains Confidential Information – PROTECTED A, Personal Information*.**

A. BASIS FOR THE RECOMMENDATIONS

A.1 Regulatory Basis

The regulatory basis for the recommendations presented in this CMD is as follows:

- *Nuclear Safety and Control Act, Section 7*
- *General Nuclear Safety Control Regulations, Section 11*
- *Class I Nuclear Facilities Regulations, subsections 9(3) and 9(4)*
- CNSC REGDOC-2.2.3, *Personnel Certification, Volume III: Certification of Persons Working at Nuclear Power Plants*
- CNSC REGDOC [Requirements for the Requalification Testing of Certified Shift Personnel at Nuclear Power Plants](#), eDocs 3436327.