



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713

April 29, 2020

J. Scott Adams, Deputy Chief of Staff,
Laboratory Operations
Department of the Army
Army Research Laboratory
ATTN: RDRL-LO
2800 Powder Mill Road
Adelphi, MD 20783-1138

SUBJECT: TEMPORARY EXEMPTION FROM U.S. NUCLEAR REGULATORY
COMMISSION REGULATION, TITLE 10 *CODE OF FEDERAL REGULATIONS*
40.41(c), MAIL CONTROL NO. 618670

Dear Mr. Adams:

By letter dated April 20, 2020, (Agencywide Documents Access and Management System [ADAMS] Accession No. ML20112F057), and email dated April 22, 2020 (ADAMS Accession No. ML20114E053) sent in response to an NRC Request for Additional Information, the Department of the Army, Army Research Laboratory, the licensee, requested an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 40.41(c), and License Conditions 15 (physical inventory) and 16 (other commitments).¹

In its request, the licensee stated that due to the COVID 19 public health emergency (PHE), access to all works sites was restricted to mission essential personnel only, which does not include authorized users of radioactive materials. Therefore, the Army Research Laboratory suspended all work that would involve active handling of licensed material effective April 7, 2020. This restriction will remain in effect until further notice.

The exemption provision in 10 CFR 40.14(a)² states:

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulation 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.

The license conditions from which the licensee requested exemption were imposed upon the licensee by the U.S. Nuclear Regulatory Commission (NRC) per 10 CFR 40.41(e). The regulation in 10 CFR 40.41(c) requires that the licensee confine its use of the source or

¹ The Army Research Laboratory requested an exemption from 10 CFR 20.1501; however, the licensee needs an exemption from the survey requirements in License Condition 16, not 10 CFR 20.1501.

² The Army Research Laboratory requested exemptions pursuant to 10 CFR 50.12, but this provision is not applicable to its licensed activities.

byproduct material to the locations and purposes authorized in the license. Therefore, exemptions to the requirement in 10 CFR 40.41(c) to comply with the terms of a license may be granted pursuant to 10 CFR 40.14.

The NRC staff reviewed the request in accordance with 10 CFR 40.14(a) and finds that the criteria contained therein are met. The license conditions from which the licensee is requesting exemption are:

- License Condition 15, which requires the licensee to perform a physical inventory every 6 months, and License Condition 16, specifically the letter dated September 18, 2015, which contains the commitment to perform a physical inventory every 6 months; and
- License Condition 16, specifically the letter dated September 18, 2015, which contains the commitment to perform surveys and leak tests at the frequency described in NUREG-1556, Volume 11.

The regulation in 10 CFR 40.14(a) authorizes granting of exemptions specific to Part 40. The NRC staff has determined that the granting of the requested exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. The NRC staff, therefore, finds that the granting of the requested exemption is authorized by law.

The NRC staff has also determined that

- The extension of the physical inventory time does not constitute a significant increase in risk to public health and safety, because the licensee suspended operations and is not using the licensed materials; and
- The extension of the survey time and the leak test time does not constitute a significant increase in risk to public health and safety, because the licensee suspended operations and is not using the licensed materials.

The NRC also notes that, absent the requested exemption, the licensee may be required to take actions that may be contrary to guidance on preventing the spread of the virus that causes COVID-19. Therefore, the NRC staff finds that the requested exemption 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 grants the following exemption for the specified period of time:

From the date of issuance of this letter for a period of 90 days, the licensee is exempt from the requirement in License Conditions 15 and 16 to perform a physical inventory of licensed material every 6 months. The licensee shall perform the required physical inventory within 30 days following the expiration of this exemption.

From the date of issuance of this letter for a period of 90 days, the licensee is exempt from the survey time interval and the leak test time required by License Condition 16. The licensee shall perform the required surveys and leak tests within 30 days following the expiration of this exemption.

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

If you have questions, please contact Betsy Ullrich at Elizabeth.ullrich@nrc.gov or (610) 337-5040.

Sincerely,

Christopher Cahill, Chief
Commercial, Industrial, R&D
and Academic Branch
Division of Nuclear Materials Safety
Region I

License No. SMB-141
Docket No. 040-06394
Mail Control No. 618670

cc: Daniel S. Hamilton, Radiation Safety Officer
Michael Borisky, ARL Health Physicist

TEMPORARY EXEMPTION FROM U.S. NUCLEAR REGULATORY COMMISSION
REGULATION, TITLE 10 *CODE OF FEDERAL REGULATIONS* 40.41(c), MAIL CONTROL NO.
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SUNSI Review Complete: Betsy Ullrich

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