



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

May 7, 2020

John Jensen, Chief
United States Department of Agriculture
Office of Homeland Security and Emergency Coordination
5601 Sunnyside Avenue, Mail Stop 5510
Beltsville, MD 20705

SUBJECT: TEMPORARY EXEMPTION FROM TITLE 10 CODE OF FEDERAL REGULATIONS 30.34(e) AND LICENSE CONDITIONS 18, 19, AND 27 OF NRC LICENSE 19-00915-03, UNITED STATES DEPARTMENT OF AGRICULTURE, MAIL CONTROL NO. 618758

Dear Mr. Jensen:

By letter dated April 29, 2020 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML20120A613, the United States Department of Agriculture, Office of Homeland Security and Emergency Coordination, the licensee, requested an exemption from License Conditions 18, 19, and 27 of NRC License No. 19-00915-03.

In the United States Department of Agriculture's request, the licensee stated that due to the COVID 19 public health emergency (PHE), USDA has limited access by USDA employees to USDA facilities and has limited official travel. Radiation Safety Division (RSD) staff are teleworking and continuing to conduct radiation oversight activities, but RSD staff are not authorized to travel (except potentially for emergency activities, which will be decided on a case-by-case basis). USDA facility access for mission-critical activities (including activities involving use of radioactive materials) is being managed by each USDA location individually.

The exemption provision in 10 CFR 30.11(a) states:

The Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of the regulations in this part and parts 31 through 36 and 39 of this chapter 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 30.34(e). The regulation in 10 CFR 30.34(c) requires that the licensee confine its use of the byproduct material to the locations and purposes authorized in the license. Therefore, exemptions to the requirement in 10 CFR 30.34(c) to comply with the terms of a license may be granted pursuant to 10 CFR 30.11.

The NRC staff reviewed the request in accordance with 10 CFR 30.11(a) and finds that the criteria contained therein are met. The license conditions from which the licensee is requesting exemption are:

- License Condition 18.A, which requires that sealed sources and detector cells shall be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration issued by the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or by an Agreement State. In the absence of a registration certificate, sealed sources shall be tested for leakage and/or contamination at intervals not to exceed 6 months, or at such other intervals as specified.
- License Condition 19, which requires that the licensee shall conduct a physical inventory every 6 months, or at other intervals approved by the U.S. Nuclear Regulatory Commission, to account for all sealed sources and/or devices received and possessed under the license. Records of inventories shall be maintained for 3 years from the date of each inventory, and shall include the radionuclides, quantities, manufacturer's name and model numbers, and the date of the inventory.
- The portion of License Conditions 27.A and 27.B that requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the letter dated April 8, 2016, specifically the statement that inspections will be conducted at the frequency identified in the NRC Inspection Manual, Chapter 2800, for the type of radioactive material used at the location, and the letter dated July 28, 2016, specifically the statement that radioactive material users will conduct an audit or inspection of their use of radioactive materials annually.
- The portion of License Condition 27.A which contains a commitment to survey facilities and maintain contamination levels in accordance with the survey frequencies and contamination levels in NUREG 1556, Volume 7, and the portion of License Condition 27.B which contains a commitment to use NUREG-1556, Volume 7 as a guide for surveying facilities and maintaining low contamination levels.

The regulation in 10 CFR 30.11(a) authorizes granting of exemptions specific to Part 30. 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 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 these sources except potentially in response to an emergency, if one occurs;
- 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 except potentially in response to an emergency, if one occurs;

- The extension of the audit or on-site inspection 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 except potentially in response to an emergency, if one occurs; and
- The extension of the survey 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 except potentially in response to an emergency, if one occurs.

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 Condition 18.A. to perform leak tests every 6 months or at the frequency specified in the SSD Registry. The licensee shall perform the required leak tests 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 requirement in License Condition 19 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 audit or on-site inspection time interval (annual) required by License Condition 27.A and 27.B. The licensee shall perform the required audit 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 required by License Condition 27.A and 27.B. The licensee shall perform the required surveys 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>.

J. Jensen

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If you have questions, please contact Jonathan Pfingsten at Jonathan.Pfingsten@nrc.gov or 610-337-5170.

Sincerely,

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

License No. 19-00915-03
Docket No. 030-04530
Mail Control No. 618758

TEMPORARY EXEMPTION FROM TITLE 10 CODE OF FEDERAL REGULATIONS 30.34(e) AND LICENSE CONDITIONS 18, 19, AND 27 OF NRC LICENSE 19-00915-03, UNITED STATES DEPARTMENT OF AGRICULTURE, MAIL CONTROL NO. 618758 DATED MAY 7, 2020

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SUNSI Review Complete: Jonathan Pfingsten

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