



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

August 25, 2020

Esmeralda Anaya, WPS Manager, Eastern Region
Agilent Technologies, Inc.
2850 Centerville Road
Wilmington, DE 19808

**SUBJECT: EXTENSION OF TEMPORARY EXEMPTION FROM U.S. NUCLEAR
REGULATORY COMMISSION REGULATION, TITLE 10 *CODE OF FEDERAL
REGULATIONS* 30.34, MAIL CONTROL NO. 622634**

Dear Ms. Anaya:

By letter dated August 5, 2020, (Agencywide Documents Access and Management System [ADAMS] Accession No. ML20219A712), and email dated August 13, 2020 (ADAMS Accession No. ML20232B836), Agilent Technologies, Inc., the licensee, requested an extension of the exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34, and License Conditions 14.A. (leak testing) and 17 (physical inventory).

In its request, the licensee stated that restrictions due to the COVID-19 public health emergency (PHE), have been eased sufficiently such that a small number of employees are granted limited access to the site. At this time, the licensee does not know if any of those employees will be working in laboratories in which the electron capture devices (ECDs) containing licensed materials are located. The letter further stated that the licensee will

- determine if persons authorized to use ECDs will be granted access to their laboratories and, if so, require them to perform a leak test and an inventory of the ECDs in the laboratory prior to use of the ECDs;
- if a laboratory in which an ECD is located will be entered by a worker who will not be using the ECDs, the worker will be required to perform an inventory of all ECDs located in that laboratory, and to maintain security of the laboratory to ensure that access to the ECDs is controlled;
- perform weekly follow-up with the persons authorized to use ECDs to ensure that a leak-test and inventory are performed;
- Maintain records of the ECD leak tests and inventory dates for performed during the exemption extension.

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 regulation from which the licensee is requesting exemption authorizes the license conditions for which the licensee requires relief.

The license conditions from which the licensee is requesting an extension of the exemption are:

- License Condition 14.A, which requires the licensee to perform leak testing every 6 months or at the frequency specified in the Sealed Source and Device (SSD) Registry; and
- License Condition 17, which requires the licensee to perform a physical inventory every 6 months.

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 further extension of the leak test time in laboratories which remain closed does not constitute a significant increase in risk to public health and safety, because the licensee suspended operations and is not using these sources;
- The further extension of the inventory time in laboratories which remain closed does not constitute a significant increase in risk to public health and safety, because the licensee suspended operations and secured the materials in an access-controlled area;
- The limited return of some workers to laboratories in which ECDs are located does not constitute a significant increase in risk to public health and safety, because requirements to be implemented by the licensee include performing leak-tests of ECDs returned to use, inventory of ECDs in the laboratories where workers are present, and maintaining security of ECDs located in the laboratories to which limited access will be granted.

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 14.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, or prior to use, whichever occurs first. Leak testing prior to use must be performed in accordance with the procedures described in the letters dated August 5 and 13.

From the date of issuance of this letter for a period of 90 days, the licensee is exempt from the requirement in License Condition 17 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, or, where workers have returned to laboratories where ECDs are located, upon the return of workers to such labs, whichever occurs first. Physical inventory upon the return of workers to such labs must be performed in accordance with the procedures described in the letters dated August 5 and 13.

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. 07-28762-01
Docket No. 030-32792
Mail Control No. 622634

cc: David S. Bennett, Radiation Safety Officer

EXTENSION OF TEMPORARY EXEMPTION FROM U.S. NUCLEAR REGULATORY COMMISSION REGULATION, TITLE 10 *CODE OF FEDERAL REGULATIONS* 30.34, MAIL CONTROL NO. 622634 DATED AUGUST 25, 2020

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SUNSI Review Complete: Betsy Ullrich

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