



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION I
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May 3, 2019

R. C. Bono, VADM, MC, USN
Director Defense Health Agency
DHHQ
7700 Arlington Blvd., #5101
Falls Church, VA 22042-5101

**SUBJECT: DEFENSE HEALTH AGENCY'S RESPONSE TO REQUEST FOR ADDITIONAL
INFORMATION REGARDING LICENSE NUMBER: 45-35423-01, DOCKET
NUMBER: 030-39046**

Dear Admiral Bono:

This letter refers to your letter dated January 24, 2019 (ML19121A285), in which you responded to our questions about the Defense Health Agency's (DHA) October 26, 2018 request (ML18330A179) that the U.S. Nuclear Regulatory Commission (NRC) allow the Department of the Navy and the Department of the Air Force to continue to permit current military treatment facilities (MTF) under their respective master materials licenses (MML) for a period of 2 years after the MTF is aligned under the DHA. Although not mentioned in your letter, the Department of the Army MTFs are also included for purposes of our discussion below.

Your January 24, 2019 letter stated in "DHA Answer 1" that the DHA plans to add each MTF to its NRC broad scope license within 2 years after the MTF falls under the DHA's authority. This plan is inconsistent with the Atomic Energy Act of 1954, as amended (AEA) and NRC's regulations—the AEA and the NRC regulations require that DHA obtain NRC's written approval *prior* to, not after, the transfer of the licensed material and programs to DHA. Thus, each MTF must be added as an authorized location of use on DHA's NRC license (License No. 45-35423-01) *prior* to the transfer of authority and control of the MTFs to the DHA. The DHA should request the addition of the MTFs to its NRC license a minimum of 90 days prior to the anticipated transfer date to provide the NRC with sufficient time to complete its review prior to the transfer date.

We would like to clarify the "2 year" assumption in your response under "DHA Answer 2." Your response relied on an NRC letter to the Navy, dated February 23, 2016 (ML16054A866). However, that letter does not support the assumption that the DHA would have 2 years after the MTF fell under the DHA to transfer an MTF to the DHA license. Rather, the NRC's 2016 letter stated, "[b]ecause the Navy's MML does not authorize the Navy to issue permits to non-Navy facilities, and the Navy has issued permits to DHA facilities, these DHA facilities must obtain NRC licenses and the Navy must rescind these permits." Additionally, the letter stated, "[a]s these facilities already hold Navy MML permits and presumably already have demonstrated that they meet NRC requirements, licensing of these facilities could be completed in a timely manner." In sum, the NRC's 2016 letter explains that the DHA facilities must obtain NRC licenses, and in no place provided for a 2-year delay in licensing.

The NRC understands that some MTFs have already been transferred to the DHA's authority and that on December 19, 2018, DHA submitted a license amendment to add these facilities to DHA's license. The NRC also understands that the DHA is working on adding resources to

support its program, and that existing service policies will remain in force until superseded by the DHA policies. Reliance on existing service policies is acceptable and will ensure continuity of treatment, as long as the MTFs are moved to the DHA license prior to being transferred to DHA authority.

The NRC looks forward to working cooperatively with the DHA to resolve this issue and ensure that DHA facilities are properly licensed and continue to provide important patient care.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, you may contact Shirley Xu at (301) 415-7640, or by email at Shirley.Xu@nrc.gov.

Sincerely,

/RA/

Donna M. Janda, Chief
Medical and Licensing Assistance Branch
Division of Nuclear Materials Safety
Region I

License No. 45-35423-01
Docket No. 03039046
Control No. 610516

DEFENSE HEALTH AGENCY'S RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION REGARDING LICENSE NUMBER: 45-35423-01, DOCKET NUMBER: 030-39046 DATED May 3, 2019

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***via email**

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