

Understandings Between the United States Department of The Air Force and The United States Nuclear Regulatory Commission

This document presents the mutually agreed upon shared responsibilities of the United States Nuclear Regulatory Commission (NRC) and the United States Department of the Air Force (DAF or licensee), Radioisotope Committee (RIC) regarding the RIC's implementation of, and compliance with, the terms and conditions of the DAF Master Materials License (MML), NRC License Number 42-23539-01AF, as amended.

ADMINISTRATIVE

1. This document supersedes the Letter of Understanding originally agreed to in the initial issuance of the DAF MML on June 26, 1985, as revised on July 1, 1987, and September 19, 2014.
2. The licensee will implement and comply with all applicable NRC rules, regulations, and orders. When the NRC has promulgated a rule revising its regulations, the licensee will implement and comply with the revised regulations by the effective date of the final rule. The licensee may elect to be more stringent in its controls.
3. The MML does not relieve the licensee from complying with any other applicable Federal or State law or regulation.
4. The licensee shall seek legal and technical advice regarding any questions concerning the interpretation of NRC rules, regulations, orders, policy, procedures, and guidance, including, but not limited to, advice concerning new or unusual applications of licensed materials not clearly authorized by the MML. The NRC shall provide the requested legal and technical advice to the RIC as soon as practicable.
5. The licensee shall not grant exemptions to NRC regulations without specific NRC authorization.
6. The licensee shall ensure that the transportation of licensed material is in accordance with NRC and U.S. Department of Transportation (DOT) regulations.
7. The licensee shall promptly notify the NRC of, or report to the NRC as appropriate, any events as required by applicable NRC rules, regulations, or orders. The RIC shall ensure that DAF permittees will make any required notifications or reports directly to the RIC as required by Department of the Air Force Manual 40-201, *Radioactive Materials (RAM) Management*, to allow the RIC to make the subsequent notification or report to the NRC as required by the applicable rule, regulation, or order.
8. The NRC shall provide guidance and assistance in areas pertinent to the administration of the MML, including technical assistance in those matters where the NRC has special capabilities and ability, or where the NRC determines that such assistance is in the best interest of its regulatory program or responsibility.
9. The NRC shall promptly provide new and revised licensing, inspection, security and enforcement guidelines, policies, and procedures to the RIC. The licensee will incorporate changes to its policies and procedures within 90 days after the effective date of the revised documentation unless the licensee requests and is granted an extension in writing by the NRC.

10. The NRC shall provide training to RIC staff, as available, in all NRC training programs concerned with licensing, inspection, health physics, materials security and other regulatory issues related to byproduct, source and special nuclear material.
11. The licensee shall maintain the level of professional and clerical staffing necessary to carry out its responsibilities under the MML.

ENVIRONMENTAL

12. For those actions that require NRC approval under the MML, certain license amendment requests are required to be accompanied by an applicant-prepared environmental report (ER) that will aid the NRC staff performing its responsibilities under the National Environmental Protection Act (NEPA) of 1969, as amended as implemented by 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." The licensee shall submit an ER if the criteria of 10 CFR 51.60, "Environmental report—materials licenses," applies. The NRC regulations in 10 CFR 51.45, "Environmental report," set forth the requirements for preparing an ER. Guidance on preparing an ER is set forth in the NRC's NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," Chapter 6. The NRC may also require that environmental information be submitted in accordance with 10 CFR 51.41 "Requirement to submit environmental information." In submitting information under 10 CFR 51.45, or in responding to NRC requests under 10 CFR 50.41, the licensee may use documents prepared or information obtained through its environmental impact analysis work conducted pursuant to the extent that such documentation or information is timely, pertinent, and responsive to the NRC's request or requirements.¹
13. The licensee must receive NRC authorization prior to establishing any new radioactive waste burial site, low-level radioactive contamination training area, or outdoor depleted uranium munitions testing range, or conducting any field study, which may involve the deliberate release of licensed material directly into the environment. The RIC must submit a written description of the proposed activity to the NRC Region IV Office for approval. The NRC will provide notice for any required NEPA document in the Federal Register.

PERMITTING

14. The RIC shall incorporate into its permitting program the most current version of the NRC's licensing guidance (NUREG-1556 series, "Consolidated Guidance About Material Licenses") and the guidance provided in the applicable Licensing Guidance Toolkits, which are located on the NRC website, to ensure compatibility of the RIC's permitting program with the NRC's licensing program.
15. The RIC can only issue a permit to an entity that is a component or constituent part of the DAF.
16. The RIC will issue permits with five-year authorization limits unless the licensing guidance in NUREG-1556, Vol. 20, "Guidance About Administrative Licensing Procedures," establishes a shorter expiration date for the specific permit type. (e.g., two years for

¹ Nothing in the Environmental Section of this LOU should be interpreted as foreclosing future flexibilities that the NRC may implement in response to the NEPA amendments in the Fiscal Responsibility Act of 2023.

possession only).

17. The RIC may approve the use of licensed materials in a permit by individuals who are not DAF personnel if the RIC determines that such individuals are qualified to use such licensed materials under the permit in accordance with applicable NRC requirements, applicable procedures established by the RIC, the RIC issued permit, and any DAF facility procedures. The workspace of individuals covered by this paragraph must be under the control of the DAF (i.e., the workspace must be either owned by or leased to the United States, under the administrative control of the DAF). The individuals covered by this paragraph include, but are not limited to, DAF contractors, students in training, and visiting professionals.

INSPECTION

18. The licensee shall incorporate the current NRC Inspection Manual Chapter (IMC) 2800, *Materials Inspection Program*, and applicable NRC inspection procedures in its inspection program to ensure compatibility with NRC's inspection program.
19. The RIC shall request authorization from the NRC, through the NRC Region IV Office, to delay an inspection from the Manual Chapter 2800 designated inspection frequency for a permittee. This request shall provide the justification for the delay of the inspection.
20. The NRC retains the authority to conduct unannounced inspections of the DAF program, including permittee programs under the MML, at times and places determined appropriate, without prior notification to the licensee. However, the NRC will typically notify the RIC and/or DAF inspector of inspections, to facilitate access to the permittee's facilities, on-site logistics, and inspection briefings (DAF Trusted Agents may help facilitate access). The licensee will not notify permittees about any proposed NRC independent inspections. Licensee staff that accompany the NRC during independent inspections of DAF permittees, are in an observational role and shall refrain from performing inspection activities concurrent with the conduct of the NRC's inspection.

TRAINING

21. The licensee shall implement a program for qualifying technical staff to perform inspections and permitting reviews that has compatible training and qualification procedures in accordance with the criteria specified in NRC IMC 1248, *Qualification Programs for Federal and State Materials and Environmental Management Programs*.
22. The licensee's qualification program shall focus on the applicable qualification journal elements that ensure acquiring competency in mastering the techniques and skills needed to collect, analyze, and integrate information using a safety and security focus to develop a supportable regulatory conclusion.
23. Initial training courses and refresher training will be in accordance with the DAF MML Health Physics Reviewer and Inspector Qualifications Policy with the most current edition.

ENFORCEMENT

24. The licensee shall implement an enforcement program based on the current NRC Enforcement Policy to ensure that enforcement actions are consistent with the Enforcement Policy and applicable NRC regulations and are uniformly applied amongst

DAF MML permittees.

25. The licensee will notify the NRC Region IV project manager of any apparent violations that could result in escalated enforcement under the NRC's Enforcement Policy. The NRC Region IV Office will provide final disposition on all apparent violations of NRC regulations or conditions of the NRC license that may require escalated enforcement actions (i.e., Severity Level I, II, and III violations). Any resulting escalated enforcement action will be issued by the NRC to the licensee.
26. The licensee may not issue a civil penalty to its permittee. The NRC reserves the right to impose civil penalties in accordance with the Enforcement Policy.
27. The NRC will coordinate with the DAF installation, after notifying and coordinating with the RIC, regarding any enforcement action involving generally licensed devices or other regulatory matters that do not involve specifically licensed material under the MML.

ALLEGATIONS

28. The RIC shall incorporate the current NRC Management Directive (MD) 8.8, "Management of Allegations," in its allegation program to ensure compatibility with the NRC Allegation Program.
29. The RIC will inform the NRC Region IV Office within five calendar days of receipt of an allegation, as defined in NRC MD 8.8. The RIC will handle allegations they receive except allegations of suspected wrongdoing or relating to improper action by RIC staff will be processed by the NRC Region IV Office.
30. Allegations received by the NRC may be handled by the NRC or be referred to the RIC for inclusion in their Allegation Program.
31. The RIC will establish a safety conscious environment in which employees and contractors are free to raise potential or actual issues within NRC jurisdiction that may involve operations, radiological releases, radiation protection or other matters relating to NRC-regulated activities, to their management and to the NRC without fear of retaliation.

INVESTIGATIONS

32. The RIC shall promptly report all suspected wrongdoing of NRC requirements to the NRC Region IV Office. The RIC shall address significant and ongoing safety/security issues promptly and subsequently discuss the safety/security issues with the NRC Region IV Office as soon as practical. 'Wrongdoing' means committing either a willful violation of regulatory requirements through deliberate action or a violation resulting from careless disregard of regulatory requirements.
33. When DAF employees, contractors, and/or military members are suspected of committing willful violations of NRC requirements, the NRC and the DAF Office of Special Investigations shall coordinate to investigate the matter, as appropriate. An investigation conducted by the Air Force Office of Special Investigations does not preclude a concurrent investigation conducted by the NRC Office of Investigations until such time as prosecution determinations are made regarding the appropriate jurisdiction.

34. The NRC has the right to request the release of investigatory information, agency positions, or witness statements that are in the care, custody, or control of the DAF. However, the release of such investigatory information to the NRC, in whatever form it may exist, is expressly subject to internal DAF confidentiality, handling and release restrictions.
35. The DAF or the NRC, as appropriate, shall refer information regarding suspected criminal violations to the Department of Justice for prosecutorial consideration when doing so is consistent with the internal requirements of, respectively, the DAF or the NRC.
36. Regardless of any action taken by the NRC as to suspected criminal violations, the DAF retains the authority to 1) take appropriate disciplinary action against employees; 2) take appropriate action against contractors under the terms of the contract; 3) take appropriate action against military members under the Uniform Code of Military Justice.

DECOMMISSIONING

37. The RIC will not issue a permit for suspected contamination sites but will do so once contamination is confirmed. If the site's contamination is subject to the *Memorandum of Understanding Between the United States Nuclear Regulatory Commission and the United States Department of Defense for Coordination on CERCLA Response Actions at DoD Sites with Radioactive Materials*, dated April 2016, (e.g., Ra-226), the RIC may permit the site for management but will not cite the MML as the authority to possess the material. These MOU sites may be the subject of possession-only, non-MML permits until remediation commences and/or concludes. These possession-only, non-MML permits will generally only be issued for a two-year period but may be renewed as needed. Newly identified contamination sites that are permitted under the MML or current MML permits that undergo decommissioning will follow the practices in accordance with item 38 below.
38. The RIC permit termination and decommissioning procedures will comply with applicable NRC rules, regulations, orders, procedures, and guidance.
 - a. The RIC will complete permit termination and decommissioning for permittees categorized as Groups 1 and 2 facilities in accordance with the screening criteria in NUREG-1757, Volume 1, Revision 2, "Consolidated Decommissioning Guidance." And any subsequent revisions.
 - b. The RIC will submit all actions involving decommissioning for permittees categorized as Group 3 and above to the NRC Region IV Office for approval. In addition, the RIC will submit the Final Status Survey Report (FSSR) to the NRC Region IV Office for approval. The NRC will approve the decommissioning plan (DP) and FSSR by letter to the RIC. The NRC shall be responsible for complying with 10 CFR Part 51 for Group 3 and above decommissioning actions.
 - c. The RIC will authorize the NRC approved DP and FSSR by permit condition.
 - d. To ensure compliance with 10 CFR 30.36, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas," the RIC shall ensure that its permittees:
 - notify the NRC Region IV Office of all changes in operating status of permittees pursuant to the notification requirements in 10 CFR 30.36(d).

- submit all DPs to the NRC Region IV Office for approval.
 - submit requests to extend time periods established in 10 CFR 30.36(d), in accordance with 10 CFR 30.36(f), to the NRC Region IV Office for approval.
 - submit requests for alternative schedules for completion of decommissioning to the NRC Region IV Office for approval.
 - submit requests for permit termination in accordance with 10 CFR 30.36(j) upon completion of decommissioning activities to NRC Region IV Office for approval.
 - retain permittee records showing the receipt, transfer, and disposal of byproduct material as well as records regarding permittee decommissioning activities until the MML is terminated.
- e. There may be cases wherein Agreement States have regulatory authority over decommissioning activities due to state exercise of plenary jurisdiction over the real property. In turn, the NRC will continue to exercise regulatory authority due to the decommissioning work being accomplished on DAF MML permitted sites. The NRC will work with the respective Agreement States to ensure both the Federal and State's regulatory requirements are met if the NRC does not yield decommissioning sole regulatory authority to the State.

PROCEDURES

39. The DAF master materials license will reference two programmatic procedures for the implementation of the MML:
- Department of the Air Force Policy Directive (DAFPD) 40-2, *Radioactive Materials (Non-Nuclear Weapons)*
 - DAFMAN 40-201, *Radioactive Materials (RAM) Management*
40. The RIC is authorized to make program changes and changes to procedures specifically identified in DAFPD 40-2 and DAFMAN 40-201, which were previously approved by the NRC and incorporated into the MML, without NRC approval, if:
- a. the proposed revision is documented, reviewed, and approved by the RIC in accordance with established procedures prior to implementation.
 - b. the revised program is in accordance with applicable NRC regulatory requirements and will not change any license conditions of the MML, and the RIC has determined that the change will not decrease the effectiveness of the RIC's radiation safety program.
 - c. the staff of the RIC and the permittee are trained in the revised procedures prior to implementation; and
 - d. the audit program of the RIC and the permittee evaluates the effectiveness of the change and its implementation.
41. The RIC's routine implementing procedures are identified as standard operating procedures (SOP) for the MML program and are not incorporated into the MML. Therefore,

the SOPs may be revised without NRC approval; however, revisions should be provided to the NRC Region IV Project Manager for awareness.

42. The NRC and the DAF will review this Letter of Understanding periodically. If changes are warranted, then the DAF and NRC will seek to finalize such changes within 180 days of the review.

FUNDING

43. Nothing in this Letter of Understanding (LOU) as between the NRC and the Air Force shall be interpreted in a manner requiring neither the Air Force nor NRC to commit, obligate and expend funds in any way that could be construed as a violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1342.

CONSISTENCY

44. The Parties intend to implement and act upon the terms of the LOU as drafted in its entirety. However, if certain clauses or terms within the LOU are determined to be inconsistent with the overall intent of the LOU, the Parties shall, by mutual agreement, eliminate consideration of the inconsistency and continue to work under the remnant consistent terms of the LOU until the LOU is amended appropriately.

SIGNATORIES

The undersigned represent and warrant that they have the necessary power and authority from their respective agencies to enter into this agreement on their agencies behalf and that each agency agrees to uphold their responsibilities as identified above as they pertain to DAF MML, NRC License Number 42-23539-01AF. The understandings identified above become effective on the effective date shown below and shall remain in effect from that date forward unless modified by written agreement of the parties.

United States Nuclear Regulatory
Commission

United States Department of the Air
Force

Division of Radiological Safety and Security
Region IV

Chair, Radioisotope Committee

Effective Date: 30 Sept 2023