

**ADDENDUM 8 TO MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U.S. DEPARTMENT OF THE AIR FORCE (DAF)  
AND  
U.S. NUCLEAR REGULATORY COMMISSION (NRC)  
ON  
ENVIRONMENTAL REVIEWS RELATED TO THE ISSUANCE OF AUTHORIZATIONS FOR  
THE PROPOSED CONSTRUCTION AND OPERATION OF A MICRO-REACTOR ON  
EIELSON AIR FORCE BASE, ALASKA**

U.S. Department of the Air Force (DAF) and the U.S. Nuclear Regulatory Commission (NRC), enter into this Addendum to the Memorandum of Understanding (MOU) between the NRC, the U.S. Department of Energy (DOE), DAF, and the U.S. Defense Logistics Agency Energy (DLA Energy) on the Eielson Air Force Base Micro-Reactor Project, which became effective on August 15, 2022. The NRC and DAF are the only Parties to this MOU Addendum, which addresses environmental reviews related to the issuance of authorizations for the proposed construction and operation of a micro-reactor on Eielson Air Force Base (AFB), Alaska. The Parties to this MOU Addendum hereby acknowledge and declare as follows:

**I. Introduction**

The Eielson AFB micro-reactor project (hereinafter referred to as the “project”) involves a vendor owning, constructing, and operating a micro-reactor on the Eielson AFB and selling power to DAF through a power purchase agreement. An NRC license would be required to own, construct, and operate this reactor, and the vendor would apply for a reactor license from the NRC. DAF is not seeking an NRC license for this reactor.

The NRC is an independent regulator that licenses advanced nuclear power plants in accordance with its regulations such that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. DAF and the NRC acknowledge that the proposed construction and operation of a micro-reactor by a vendor on Eielson AFB will require separate licensing by the NRC and authorization by the DAF. Prior to making its decision on the licensing or authorization of the project, each party understands that requirements under the National Environmental Policy Act of 1969 (NEPA), the National Historic Preservation Act (NHPA) section 106, and the Endangered Species Act (ESA) section 7 must be met. This includes cooperative development of an environmental impact statement (EIS) to support authorizations for construction and operation.<sup>1</sup> Recent acts<sup>2</sup> and guidance encourage coordination between agencies to address NEPA obligations and ensure that agency efforts are complementary and not duplicative.

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<sup>1</sup> If the vendor seeks a combined license under 10 CFR Part 52, a single EIS would be developed for the combined license application. If the vendor seeks a construction permit and then an operating license under 10 CFR Part 50, a single EIS would be developed for the construction permit application and a supplement to the EIS would be developed for the operating license application. The term “EIS,” as used in this MOU Addendum, encompasses the EIS and any supplement(s) for licenses to construct and operate the reactor.

<sup>2</sup> As modified by the 2021 Bipartisan Infrastructure Law, the Fixing America’s Surface Transportation (FAST) Act was signed into law in 2015. Title XLI of this Act (42 U.S.C. § 4370m et seq.), referred to as “FAST-41,” created a new governance structure, set of procedures, and funding authorities to improve the Federal environmental review and authorization process for covered infrastructure projects by promoting early consultation, interagency coordination and project-specific planning. The Fiscal Responsibility Act of 2023 made changes to NEPA that, among other things,

## **II. Purpose**

In 2022, the DAF and NRC, along with DLA Energy and DOE, entered into an MOU that set forth roles and responsibilities and the processes that will guide interagency interactions regarding the deployment of a micro-reactor at Eielson AFB. The 2022 MOU broadly defined the relationship between the DAF and NRC for the environmental aspect of the application review. The MOU stated that NRC would prepare an appropriate environmental analysis pursuant to the NRC regulations implementing NEPA in 10 CFR Part 51 and would lead public meetings and interactions.<sup>3</sup> In the MOU, DAF agreed to support NRC's preparation of the environmental analysis required by NEPA, provide information to the NRC as requested, meet as needed and, to the maximum extent possible, use and adopt the NRC's NEPA analysis to meet DAF NEPA obligations.<sup>4</sup> Unless modified by this Addendum, the provisions of the MOU apply to matters within the scope of this Addendum.

The purpose of this Addendum to the MOU is to:

- Further define how the roles and responsibilities outlined for each agency in the 2022 MOU will be implemented to enable efficient preparation of a single EIS for the proposed project that satisfies NEPA and other related statutes, and
- Establish a cooperating agency relationship between DAF and NRC, which would enable adoption of the NRC EIS by the DAF, as set forth in Section 3.1.8.1 of the 2022 MOU, through the procedures outlined in 40 CFR 1506.3(b)(2) of CEQs NEPA regulations.

Coordination between DAF and NRC will support each agency's unique role and fulfill the requirement that agencies meet NEPA obligations in an efficient and meaningful way. This Addendum to the MOU does not affect each party's duty to fulfill its legal obligations (including in areas where another agency is the lead agency) and make an independent decision regarding the authorization of the project. This Addendum may be revised, supplemented or nullified if, during the project, the NRC and DAF determine that agency roles and project goals would be best served by another arrangement.

## **III. Statutory and Regulatory Background**

A. Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., all federal agencies are required to prepare detailed statements assessing, among other things, the environmental impact of, and alternatives to, major federal actions significantly affecting the quality of the human environment. Prior to making any detailed statement, the head of the lead agency shall consult with and obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. If there are two or more participating Federal agencies, such agencies shall determine which agency shall be the Lead Agency in accordance with Section 107(a)(1)(A) of NEPA.

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clarifies the designation, roles, and responsibilities of lead agencies and cooperating agencies (NEPA § 107(a)) and promotes development of a single environmental document. (NEPA § 107(b)).

<sup>3</sup> See Section 3.1.4.

<sup>4</sup> See Sections 3.1.8.1 and 3.1.9.

B. The Fiscal Responsibility Act of 2023 (FRA) (Pub. Law 118-5, 137 Stat. 10) amended NEPA. The amendment clarified the roles and responsibilities of lead agencies and cooperating agencies, including designation of such agencies, and promoted development of a single environmental document. Also, the FRA put page limits and deadlines on the issuance of environmental assessments and environmental impact statements.

C. The Council on Environmental Quality (CEQ) NEPA Implementing Regulations, 40 C.F.R. Parts 1500 through 1508, emphasize interagency cooperation early in the environmental review process.<sup>5</sup> The CEQ NEPA Implementing Regulation 40 C.F.R. § 1501.7 provides for the designation of a Lead Agency that will supervise the preparation of an EIS or environmental assessment if more than one Federal agency either proposes or is involved in the same action or is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity. 40 C.F.R. § 1501.8 provides that, upon request of the Lead Agency, any Federal agency with jurisdiction by law shall be a Cooperating Agency, and any other Federal agency with special expertise with respect to any environmental issue may be a Cooperating Agency.

D. Pursuant to the Advisory Council on Historic Preservation regulation for protection of historic properties, 36 C.F.R. § 800.2(a)(2), if more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108).

E. The Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations Subchapter A, 50 C.F.R. § 402.07 provides that when a particular action involves more than one Federal agency, the consultation and conference responsibilities under Section 7 of the Endangered Species Act (16 USC § 1536) may be fulfilled through a Lead Agency.

F. The Energy Reorganization Act of 1974 (Pub. Law 93-438, (88 Stat. 1233)) abolished the Atomic Energy Commission, and Section 201 of that Act created the NRC and transferred to the NRC all the licensing and related regulatory functions of the Atomic Energy Commission. The NRC is authorized to license and regulate the construction and operation of nuclear power plants for common defense and security and public health and safety.

#### **IV. Roles and Responsibilities of Each Party**

**NRC as the NEPA Lead Federal Agency.** The NRC is the independent safety and security regulator for the civilian use of radioactive materials. The NRC is responsible for the evaluation

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<sup>5</sup> The NRC is subject to the requirements of NEPA and the NRC's environmental regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." As stated in 10 CFR 51.10(a)(2), the NRC's environmental regulations in 10 CFR Part 51 "reflect[] the Commission's announced policy to take account of the regulations of the Council on Environmental Quality published November 29, 1978 (43 FR 55978-56007) voluntarily, subject to certain conditions."

of the micro-reactor licensing application and the decision-making regarding whether to license the facility.

To prevent duplication of effort, NEPA requires federal agencies to determine which agency shall be the lead. For the EIS(s) being prepared pursuant to this MOU Addendum, the NRC will serve as the lead federal agency, and DAF will serve as a cooperating agency.

The NRC will be responsible for drafting sections of the EIS(s) (and requesting additional information as necessary) that are needed to support NRC licensing decisions. DAF will be responsible for drafting sections of the EIS (and requesting additional information as necessary) that specifically relate to DAF activities or information needs that are not needed to support NRC licensing decisions. In areas where both agencies may have involvement, if DAF believes that additional analysis is needed, but the NRC does not agree that such analysis would be necessary under the regulatory procedures of the NRC, such analysis will be the responsibility of DAF.

The NRC shall:

- Serve as the lead agency in the preparation of NEPA documents associated with authorization decisions on construction and operation of the reactor, including the drafting and assembling of sections of the EIS(s) as discussed above.
- Determine the purpose and need of the project for purposes of the NRC licensing process.<sup>6</sup>
- Address the impacts of preconstruction activities (i.e., those activities listed in paragraph (1)(ii) of the definition of “construction” in 10 CFR 51.4) in the NRC NEPA document with input from DAF, as appropriate.
- Lead public scoping and meetings in support of the NEPA analysis to ensure appropriate information is available and released to the public and that stakeholder input is considered in the NEPA analysis. Lead FAST-41 actions related to the NEPA review, if FAST-41 is applicable to this project.
- Support DAF-led NHPA Section 106 reviews and consultations in accordance with NHPA regulations for activities needed to support NRC licensing decisions and coordinate with DAF on NHPA-related review and consultation associated with other project activities to reduce the burden to the Alaska State Historic Preservation Officer and Federally Recognized Tribes and avoid multiple, redundant consultations.
- Conduct ESA Section 7 review and consultation in accordance with the ESA, and coordinate with DAF to reduce duplicative consultation efforts.
- Issue its own Record of Decision (ROD).

#### **DAF as a NEPA Cooperating Agency**

The DAF shall serve as a Cooperating Agency in the NEPA reviews for authorization decisions on construction and operation of the reactor. As a cooperating agency, DAF shall:

- Support the preparation of an appropriate environmental analysis by the NRC and as required by NEPA through actions that include providing information to support the completion of the NRC’s NEPA review, and other actions requested by the NRC.
- Ensure that the NEPA analysis is sufficient to fulfill the DAF NEPA requirements, based on its jurisdiction by law and special expertise, and is appropriate to be used and

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<sup>6</sup> 10 CFR Part 51, Subpart A, “National Environmental Policy Act—Regulations Implementing Section 102(2).”

adopted by the DAF as desired, including the drafting of EIS sections as discussed above.

- Determine the purpose and need of the project for purposes of the DAF involvement in the project for inclusion in the NEPA document.
- Lead and conduct NHPA Section 106 reviews and consultations in accordance with NHPA regulations for project activities. DAF shall document any such reviews, which may be cited in the NRC NEPA documents. DAF shall coordinate with NRC on ways to reduce the burden on the Alaska State Historic Preservation Office and Federally Recognized Tribes that may result from multiple, redundant, consultation efforts being conducted by each agency for the project. DAF will coordinate with NRC on the type and number of tribes to consult with.
- Lead and conduct consultation and conference responsibilities under ESA Section 7, and document any conclusions provided by the U.S. Fish and Wildlife Service. Any such documentation may be cited in NRC NEPA documents.
- Issue its own ROD.
- Participate in scoping and schedule development and communicate any issues that may affect the ability to meet the schedule.

When the NRC provides to the DAF its preliminary draft NEPA documents, the DAF shall review and provide written comments on the relevant portions of those documents in a reasonable period of time. Preliminary draft NRC NEPA documents include advance copies of the purpose, need, background, alternatives, and environmental analysis sections of the NEPA documents, as well as advance copies of the draft and final NEPA documents. DAF reviews of NRC NEPA documents shall be completed and coordinated with the NRC as stated in the NRC EIS schedule for this project. To the maximum extent practicable consistent with its responsibilities as Lead Agency, the NRC shall consider the comments, recommendations, data, and/or analyses provided by the DAF in the NEPA process, giving particular consideration to those topics on which the Cooperating Agency has jurisdiction by law or possesses special expertise.

## V. Project Coordination

**General.** DAF and the NRC hereby agree to work with each other and with other agencies or entities, as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. This Addendum outlines the roles and responsibilities related to coordination between the NRC and DAF during the NEPA process including those related to engagement with the public, other government agencies, and Tribal nations.

**Consultation.** Coordination between NRC and DAF for activities related to NHPA Section 106 and ESA Section 7 review and consultation may include establishment of limited working groups of technical subject matter experts and PMs for further discussions and alignment on agency actions related to reviews and consultation.

**NEPA.** The NRC and DAF should coordinate early on the scope of the NEPA analysis for all activities under each agencies' Federal purview and ensure that the purpose and need, the suite of alternatives, and the evaluation presented in the NEPA documents meet the needs of each agency, where possible. The NRC and DAF will complete independent decisions in carrying out their respective responsibilities.

All activities conducted under this MOU Addendum will be consistent with the roles of the NRC as an independent safety and security regulator and the DAF as the site-owner and project sponsor.

DAF and the NRC hereby agree to work with each other to ensure that timely decisions with respect to the preparation of the project-specific NEPA documents are made and that the responsibilities of each agency are met. Specifically, each agency agrees to the following list of responsibilities:

**A. NEPA Document Preparation.** The NRC and DAF may develop additional guidance to ensure that the preparation of the project-specific NEPA documents are coordinated to achieve an efficient review schedule to the maximum extent practicable. This includes the following actions for analysis and document preparation:

- As indicated above, the NRC will draft the NEPA document with input for specific sections provided by DAF. As the licensing authority and as the lead agency for the EIS that supports such licensing, the NRC will make final determinations for NRC conclusions needed for NRC licensing.
- This MOU Addendum acknowledges that it is critically important that the DAF receive advanced copies of documentation so that the documentation meets both parties' decision-making requirements. The agencies shall provide preliminary draft NEPA documents for review and comment or the relevant portions of those documents, as appropriate. The NRC preliminary draft NEPA documents may include advance copies of the purpose and need section, as well as advance copies of the draft and final project-specific NEPA documents. If applicable, the NRC will assemble the draft and final NEPA documents with DAF-specific sections prepared by DAF. The NRC will then provide DAF with an adequate period of time in which to review and concur on the draft and final NEPA documents. DAF's review of the NRC preliminary draft NEPA documents will be completed and coordinated with the NRC as stated in the NRC NEPA schedule for each project.
- Upon completion of the final project-specific NEPA document, DAF will commence its process for considering adoption of the NEPA document or completing any required additional NEPA reviews in accordance with agency regulations and policy.

**B. Scheduling.** In accordance with NEPA Section 107(a)(2)(D), the NRC will develop a schedule, in consultation with each cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action. Parties will coordinate on schedules for: (1) development and review of draft and final NEPA documents; (2) consultation; and (3) public and interagency meetings. Both parties will endeavor to develop schedules that are consistent with both parties' deadlines to the maximum extent possible, while ensuring that the parties are able to meet their legal and regulatory obligations.

The NRC will develop a schedule, setting NEPA milestones listed in the next paragraph, as soon as practicable. In establishing this schedule, the NRC and the DAF will strive to ensure

that the individual vendor permitting processes and related permit review activities occur on a concurrent, rather than sequential, basis, with the objectives of avoiding unnecessary delays in the process and the schedule established by the NRC, and of completing the EIS within two years as required by NEPA. If at any point during the consultation process the DAF or the NRC anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability as soon as possible. The parties will provide NEPA milestone status updates to respective agency leadership during quarterly Council for Alaska Micro-reactor Pilot (CAMP) meetings. The NRC will include in any Notice of Intent to Prepare an EIS guidance to the public regarding the process set forth in this MOU Addendum.

NEPA Milestones:

- Proposed action and alternatives developed by NRC and DAF
  - Publication in the Federal Register of the notice of intent to prepare an EIS, including the public scoping period
  - Publication in the Federal Register of the Notice of Availability (NOA) of the draft EIS
  - Public comment period on the draft EIS
  - Publication in the Federal Register of the NOA of the final EIS
  - Publication in the Federal Register of the NOA of the Record of Decision
- i. **Proactive Participation.** This MOU Addendum acknowledges that it is critically important that the NRC receive project-specific information from DAF at key stages of project development to foster an efficient procedure to develop documentation to meet both agencies' disclosure and decision-making requirements. After an application is submitted to the NRC, DAF will: provide the NRC with relevant studies, data (such as maps showing features over which the DAF may have jurisdiction), and any other information concerning the status of matters the DAF considers relevant (including matters that may be under consideration, such as the results of threatened and endangered species consultation, or essential fish habitat consultation).
- The agencies will work together and with other stakeholders, as appropriate, including before complete applications for the necessary authorizations are filed.
  - The agencies will identify and resolve issues as quickly as possible.

**C. Sharing of Information.** As appropriate, the parties will share the information gathered, considered, and relied upon by each of them to complete the NEPA review. Specifically, the NRC and the DAF agree to:

1. Cooperate in the preparation of requests for additional information, studies, or data to avoid duplicative requests and to compile a consistent set of information on which the agencies will rely.
2. Cooperate in identifying and developing the information at the level of detail required to complete environmental and cultural resources project review.

3. The NRC will be responsible for drafting sections and requesting additional information, as described above.

- D. Communication.** The parties agree to informally communicate with each other and other relevant agencies throughout the process to ensure that issues are raised as soon as possible and shared among all agencies.
- E. Hearings.** On request, the Cooperating Agency will participate in any public hearings held by the Lead Agency. Particularly in the case of NRC hearings, the DAF may provide expert testimony, as required, in those areas or sections covered in the NRC EIS in whose preparation the DAF participated and in those areas of special DAF expertise.

## **VI. Administration of the MOU Addendum**

- A.** The NRC and DAF acknowledge that the MOU Addendum does not alter the authority and responsibilities of the parties under their respective jurisdictions. While retaining ultimate responsibility for making determinations and exercising their individual responsibilities in accordance with existing statutory responsibilities, the NRC and the DAF will consult with one another to resolve disputes using existing dispute resolution methods and in accordance with this MOU Addendum. If no agreement can be reached, the dispute will be elevated to higher levels of authority within each agency. The NRC and DAF reserve the right to make a final decision on any matter within their regulatory authority.

Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the MOU Addendum.

1. This MOU Addendum is intended only to improve the working relationships of the parties in connection with expeditious decisions with regard to this project and is not intended to, nor does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.
2. This MOU Addendum is to be construed in a manner consistent with all effective existing laws and regulations.
3. The MOU Addendum neither expands nor is in derogation of those powers and authorities vested in the parties by applicable laws, statutes, or regulations.
4. The terms of this MOU Addendum are not intended to be enforceable by any person or entity other than the signatories hereto.
5. The parties intend to fully carry out the terms of this MOU Addendum. All provisions in this MOU Addendum, however, are subject to available resources. In addition, this MOU Addendum does not limit the ability of any of the parties to review and respond to final applications.
6. If an applicant, prospective applicant, or other person requests a correction of information disseminated pursuant to this MOU Addendum, as authorized by Section 515 of the Treasury and General Government Appropriations Act for



Fiscal Year 2001 (P.L. 106-554), the process by which such request will be addressed will be that established by the party that disseminated the Information.

7. This MOU Addendum cannot be used to obligate or commit funds or as the basis for the transfer of funds.
8. Nothing in this MOU Addendum, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement.
9. All provisions in this MOU Addendum are subject to the availability of funds.
10. This MOU Addendum is not transferable except with the written consent of the parties.

**B. Modification:** Modifications to this MOU Addendum shall be made by mutual consent of the parties through the issuance of a written instrument signed and dated by both parties.

**C. Termination:** Either party, in writing, may terminate this MOU Addendum in whole or in part at any time before the date of expiration upon 30 days written notice to the other party. Either party may terminate application of this MOU Addendum to a specific project in whole or in part at any time before the date of expiration upon 30 days written notice to the other party. During any such 30-day waiting period, the parties will actively attempt to resolve any disagreement between them.

**D. Dispute Resolution:** While retaining ultimate responsibility for making determinations and exercising their individual responsibilities in accordance with existing statutory responsibilities, the parties will consult with one another to resolve disputes using existing dispute resolution. If no agreement can be reached, either agency may refer the matter to the Council on Environmental Quality in accordance with 40 CFR Part 1504, Dispute Resolution and Pre-Decisional Referrals. Notwithstanding any such referral, the NRC and DAF reserve the right to make a final decision on any matter within their regulatory authority.

ACCORDINGLY, the parties have signed this MOU Addendum on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

FOR THE US NUCLEAR REGULATORY COMMISSION:

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Mohamed Shams, Acting Deputy Director  
Office of Nuclear Reactor Regulation

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John Lubinski, Director  
Office of Nuclear Material Safety and Safeguards

ACCORDINGLY, the parties have signed this MOU Addendum on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

FOR THE US DEPARTMENT OF AIR FORCE:

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Robert E. Moriarty, P.E., Deputy Assistant Secretary (Installations)  
Secretary of the Air Force