

March 23, 2001

MEMORANDUM TO: Those on the Attached List

FROM: William D. Travers */RA/*
Executive Director for Operations

SUBJECT: MEMORANDA OF UNDERSTANDING BETWEEN THE EXECUTIVE
DIRECTOR FOR OPERATIONS AND THE EXECUTIVE DIRECTOR
FOR THE ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
(ACRS) AND THE ADVISORY COMMITTEE ON NUCLEAR WASTE
(ACNW)

Based on the recognition that the Memoranda of Understanding (MOUs) between the ACRS and ACNW and the NRC staff required updating to provide better guidance and to reflect current procedures, John T. Larkins, Executive Director, ACRS and the ACNW, provided draft MOUs to me, on May 2, 2000. Subsequently, we provided the draft MOUs to the Offices of NRR, NMSS, RES, General Counsel, and Regions for review and comment. Following the resolution of comments, the final MOUs were sent to Office Directors of NRR, NMSS, RES, the General Counsel, and Regional Administrators on December 21, 2000, for concurrence. The attached final MOUs are being sent to you for your information and will be incorporated into the EDO Procedures Manual. I believe that the MOUs will result in more effective interactions and coordination between the NRC staff and the ACRS and ACNW members and staff.

Attachments: As stated

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Attachments: As stated

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MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED: March 23, 2001

SUBJECT: MEMORANDA OF UNDERSTANDING BETWEEN THE EXECUTIVE DIRECTOR
FOR OPERATIONS AND THE EXECUTIVE DIRECTOR FOR THE ADVISORY
COMMITTEE ON REACTOR SAFEGUARDS (ACRS) AND THE ADVISORY
COMMITTEE ON NUCLEAR WASTE (ACNW)

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Hubert J. Miller, Regional Administrator, Region I	RGN-I	
Luis A. Reyes, Regional Administrator, Region II	RGN-II	
James E. Dyer, Regional Administrator, Region III	RGN-III	
Ellis W. Merschoff, Regional Administrator, Region IV	RGN-IV	

MEMORANDUM OF UNDERSTANDING

PARTIES: Advisory Committee on Nuclear Waste (ACNW)
Executive Director for the Advisory Committee on Reactor Safeguards (ACRS)
and the Advisory Committee on Nuclear Waste (ACNW)

Nuclear Regulatory Commission Staff (NRC)
Executive Director for Operations (EDO)

SUBJECT: ACNW PARTICIPATION IN THE DEVELOPMENT OF NRC RULES, SAFETY-RELATED GUIDANCE, LICENSING DECISIONS, AND RESOLUTION OF TECHNICAL ISSUES

BACKGROUND:

The ACNW was established by the Commission in June 1988 to provide the Commission with independent reviews of, and advice on, nuclear waste facilities. This includes review of license applications for land disposal of radioactive waste under 10 CFR Part 61 and the disposal of high-level radioactive waste in the proposed Yucca Mountain geologic repository (proposed Part 63). It also includes review of NRC regulatory actions under other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The ACNW has, at the request of the Commission, been providing advice on site decommissioning issues. The ACNW reports directly to the Commission.

The ACNW operations are governed by the provisions of the Federal Advisory Committee Act (FACA). ACNW operational practices are designed to encourage the public, industry, Indian nations, state and local governments, and other stakeholders to become involved in Committee activities. The ACNW is subject to the NRC regulations implementing FACA, set forth in 10 CFR Part 7. The ACRS and the ACNW work cooperatively in reviewing matters of interest to the Commission and, where the Committees' responsibilities overlap, divide work in the manner that best serves the interests of the Commission.

PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to establish a process for ensuring that (1) the NRC staff solicits ACNW views early in the development of NRC rules and safety- and risk- significant guidance; in licensing decisions; and in resolution of technical issues, (2) the NRC staff keeps the ACNW informed of emerging issues, and (3) the ACNW responds to staff requests for review and comment in a timely manner. This MOU:

- Identifies areas within the scope of ACNW responsibility.
- Establishes a process to enable the ACNW and the NRC staff to establish plans and schedules that address the needs of the Commission, the NRC staff, and the ACNW.
- Establishes a process for ensuring that ACNW reviews are done at a sufficiently early stage to permit effective and efficient interaction.

1. AREAS WITHIN THE ACNW SCOPE OF RESPONSIBILITY

Areas within the ACNW scope of responsibility are identified in the following sections. The intent is to identify the areas of responsibility and not to imply any establishment of priorities. Priorities will be set by the Commission and identified in Commission directives and in the Committee's Action Plan.

a. NRC Regulations

The scope of the ACNW's responsibility encompasses the following parts of NRC's regulations found in Title 10 of the Code of Federal Regulations:

- Part 20 Standards for Protection Against Radiation

[Although the ACRS has primary responsibility for 10 CFR Part 20, ACNW maintains a continuing interest with respect to items that impact on radioactive waste handling and disposal facilities, such as radiological criteria for license termination. The ACRS/ACNW Office will keep ACNW informed of anticipated NRC activities based on material provided for ACRS consideration.]
- Part 30 Domestic Licensing of Byproduct Material
- Part 40 Domestic Licensing of Source Material, as applied to decommissioning and waste disposal
- Part 50 Domestic Licensing of Production and Utilization Facilities, as applied to decommissioning
- Part 51 Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, as applied to waste repository and other waste-related matters
- Part 60 Disposal of High-Level Radioactive Wastes in Geologic Repositories
- Part 61 Licensing Requirements for Land Disposal of Radioactive Waste
- Part 63 (Proposed) Disposal of High-Level Radioactive Waste in a Proposed Geologic Repository at Yucca Mountain, Nevada
- Part 70 Domestic Licensing of Special Nuclear Material, as applied to decommissioning
- Part 71 Packaging and Transportation of Radioactive Material, as applied to the management of radioactive waste
- Part 72 Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, as applied to off-site storage and on-site storage during decommissioning

b. Regulatory Activities

Regulatory activities within the ACNW's scope of responsibility include the following:

- Waste management safety-related rules
- Waste management safety-related regulatory guides, standard review plans, and branch technical positions
- Technical recommendations and guidance to States and Compacts regarding LLW issues
- Guidance on matters related to risk communication, defense-in-depth, and the use of the linear no threshold criteria
- Areas related to risk-informed and performance-based regulations
- Licensing and decommissioning activities for facilities within the scope of the ACNW's responsibility
- Selected pre licensing activities for HLW and LLW facilities (e.g., site characterization plans, and analyses), as deemed appropriate in consultation with the Commission and the NRC staff
- NRC-sponsored research and technical assistance activities related to HLW and LLW management and disposal, and decommissioning

2. COORDINATION BETWEEN NRC OFFICES, REGIONS, AND THE ACNW

An individual from the OEDO will be assigned responsibility for coordinating implementation of this MOU with NRC offices reporting to the EDO and with the ACNW. An NRC staff office coordinator will be established in NRR, RES, and NMSS to coordinate implementation of the provisions of this MOU for their office. Upon request from the OEDO, the office coordinators will collect and provide to the OEDO information for development of draft proposed ACNW agendas for the three months following the next ACNW meeting. The OEDO coordinator will prepare the draft proposed agendas. The NRC staff office coordinators and the OEDO coordinator will meet with cognizant ACNW staff before each ACNW meeting. At this meeting, further information will be discussed to finalize the proposed ACNW agendas for the three months following the next ACNW meeting. The Administrative Officer/OEDO will issue the proposed agendas on a monthly basis to the Executive Director for ACRS/ACNW.

The ACNW staff member who has responsibility for the matter under review will serve as the ACNW contact for day-to-day interactions on that matter with the NRC staff. The NRC contact for a technical matter should be the NRC staff member who has the day-to-day technical responsibility for the item under ACNW consideration. Schedule and administrative matters should be coordinated through the NRC staff office coordinator. The NRC contact for a technical matter should strive to keep the cognizant ACNW staff contact up-to-date on NRC progress on the matter. This should include verbal communication and the transmittal of documents that provide the ACNW contact with an understanding of the technical issues.

3. EARLY INTERACTION AND SELECTION OF MATTERS FOR ACNW REVIEW

The EDO, with guidance from the Commission as appropriate, will identify matters requiring ACNW consideration in the early stages of development to allow sufficient time to permit

effective and efficient review by the ACNW. Following discussions between the NRC staff office coordinators and the cognizant ACNW staff, the anticipated staff action will be included in the list of proposed ACNW agenda items provided in the EDO's monthly memorandum on proposed agenda items for the ACRS and the ACNW. The ACNW will inform the cognizant NRC staff office and the EDO's office on a timely basis whether it intends to review a specific matter. Decisions on whether to review will be made in accordance with Commission guidance, the needs of the EDO, and the recommendations of the responsible ACNW Subcommittee Chairman and the ACNW Action Plan.

The ACNW will sometimes take up a matter for review on its own initiative with the agreement of the Commission. The ACNW will inform the EDO and the cognizant staff office when these activities are initiated and will coordinate these activities with the responsible NRC OEDO and staff office coordinators and staff.

The NRC staff will give the ACNW staff relevant information about papers being developed by the NRC staff for which there is no request for an ACNW review or information briefing. For example, rulemaking for the purpose of approving or amending NRC certifications for interim storage cask designs will not routinely be reviewed by ACNW. The ACNW will receive reporting and tracking documents for such papers. In addition, the EDO will send the ACNW a 90-day projection for such papers on a monthly basis. The NRC staff will work with the ACNW to enable the ACNW to identify its review interests.

4. ESTABLISHING A SCHEDULE FOR THE ACNW REVIEW

If the ACNW decides to review a specific matter, the response will be provided in a timely manner so that the Commission can have the benefit of the Committee's advice in making a decision on the matter. When the EDO has the authority for making the regulatory decision, the ACNW review will be performed before the EDO makes this decision. When a proposed regulatory action is to be published for public comment, the ACNW may review the matter both before and after public comment, as appropriate for the particular case. There may be circumstances where the ACNW will defer its review of a specific matter until after public comments have been received and addressed by the staff. In such cases, the Executive Director for ACRS/ACNW will notify the EDO.

The cognizant NRC staff office will ensure that the schedule for development of a specific matter includes sufficient time (normally about 60 days) for ACNW review before the date by which ACNW comments are desired. Subject to section 5.b, below, the documents that the ACNW needs for a full Committee discussion should be provided to the ACNW at least four weeks in advance of the discussion. When the documents cannot be provided within this time frame, the discussion will only be scheduled after agreement by the cognizant Office Director and the Executive Director for ACRS/ACNW. When the documents are so voluminous or complex as to preclude adequate Committee review in four weeks, the Executive Director for ACRS/ACNW will consult with the cognizant Office Director and establish other arrangements.

When a choice must be made between timely submission of documents to the Commission or submission first for ACNW review, the EDO and the Executive Director for ACRS/ACNW will consult with the Secretary of the Commission. It is expected that this will occur only in very unusual circumstances and that in these cases the Commission will make the decision as to the appropriate course of action.

5. SUBMITTING DOCUMENTS FOR ACNW REVIEW AND INFORMATION

a. Submittal of Documents

Twelve copies of documents related to a specific matter will be transmitted to the ACNW by the cognizant NRC Division Director by way of a memorandum addressed to the Executive Director for ACRS/ACNW requesting appropriate ACNW action. When sending a specific matter to the ACNW for review, the cognizant staff office will ensure that the ACNW is provided with copies of related documents, such as public comments and the staff's resolution of these comments, the Committee to Review Generic Requirements (CRGR) comments, if any, and, as appropriate, directly related differing professional opinions and/or differing professional views.

Five copies of documents related to a specific matter will also be provided to the ACNW for information by the NRC staff contact at the following stages, when applicable, with a memorandum addressed to the Executive Director for ACRS/ACNW, indicating that the documents are being sent to the ACNW for information:

- When the documents are sent to the Federal Register to be published for public comment.
- When the documents are sent to the Federal Register to be published as effective documents.

The Executive Director for ACRS/ACNW will define an ACNW staff user group for access to NRC staff documents in ADAMS. This group will be provided "viewer" rights by NRC staff to documents within the purview of the ACNW and prepared by offices reporting to the EDO when the documents are placed into ADAMS. This access is for the purpose of keeping individual ACNW staff members up-to-date on NRC staff actions that effect their area of responsibility. Access to or discussion of such documents by ACNW staff with ACNW members or with other persons who are not regular Government employees, is subject to applicable provisions of section 5.b. and to guidance from the Office of the General Counsel.

b. Discussion and Handling of Restricted Distribution Documents

When the ACNW and the NRC staff have discussions on matters that involve predecisional information the following procedures will be used:

- NRC staff discussions with the ACNW of issues addressed in NRC predecisional or other restricted distribution documents will be open to the public, unless a Government in the Sunshine Act exemption applies.¹ Open discussion of agency matters facilitates external stakeholder input and provides an opportunity for the public to better understand Agency decisions.
- Discussion of the contents of a predecisional or other restricted distribution document with a member of the public or in a public meeting may result in the loss of the ability to

¹ Under the FACA, meetings of advisory committees are generally required to be open and documents provided to or prepared by advisory committees are generally required to be made available for public inspection and copying. However, FACA also provides that portions of advisory committee meetings may be closed to the public if they fall within exemptions contained in the Government in the Sunshine Act. Similarly, documents made available to or prepared for or by an advisory committee may be withheld from the public if they fall within an exemption contained in the Freedom of Information Act. There are a number of exemptions listed in the Sunshine Act and the Freedom of Information Act and assistance in their interpretation may be obtained from the Office of the General Counsel.

withhold all or part of the document under Freedom of Information Act (FOIA) exemptions. To avoid the disclosure to the public of the contents of an agency predecisional or other restricted distribution document during NRC staff discussions with the ACNW, the contents of such a document will not be discussed at an open ACNW meeting, unless the discussion of the document at the meeting has been approved by the appropriate agency official, as described below.

- Issues that are discussed in a predecisional document can sometimes be addressed in a Committee meeting without reference to the contents of the predecisional document itself. In such circumstances, the discussion is not likely to compromise the ability to withhold the predecisional or other restricted distribution document under an FOIA exemption.
- ACNW meetings can be closed on such grounds as discussion of proprietary material under exemptions allowed by FACA. Members of the public may request a closed meeting if they believe an exemption applicable to them authorizes closure. The NRC staff may also request closure of a meeting, subject to the exemptions allowed by FACA. Requests by members of the public and NRC staff to close meetings will be considered under applicable law. The closing of ACNW meetings requires a written request to the Chairman of the Commission, or the Chairman's designee, and review by the Office of the General Counsel, in accordance with 10 CFR 7.15. When requests for closure are received by the ACNW, the ACNW staff may need the assistance of the Office of the General Counsel (OGC) and NRC staff technical experts on an expedited basis to make accurate judgments as to what information should be protected.
- When the ACNW wishes to discuss all or part of a predecisional document at a meeting that is not exempt from the open meeting requirements of FACA, cognizant NRC staff will participate in an open ACNW Subcommittee or full Committee meeting if prior approval has been obtained from the Commission or its designee (when the Commission itself is to make the final decision on the matter addressed in the paper), or from the EDO (for other predecisional documents originating from the staff).
- In those cases where the Commission or the EDO (as applicable) has approved discussion of all or part of a predecisional document at an open meeting of the ACNW, the document may be transmitted to the ACNW staff by the cognizant Division Director for review by the Committee. The transmitted documents will be clearly marked as predecisional. Other applicable restrictions (e.g., proprietary information) on the release to the public of documents submitted to the ACNW should also be clearly marked on the documents to facilitate their proper storage and handling.
- All documents used by the Committee in its deliberations are required to be retained by the Committee as part of its FACA records and will be retained for the life of the Committee. Requests for such documents by members of the public will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- In those cases where the ACNW will discuss issues addressed in a predecisional document, but will not disclose the contents of the document, the document may be transmitted to the ACNW staff by the cognizant Division Director for transmittal to individual Committee members as background information. As long as any discussion of the issues that may also be addressed in such a document does not disclose the contents of the document in a meeting open to the public, the withholdability of the

document under FOIA is not likely to be compromised. However, the use of the document itself in the Committee's deliberations will result in the document becoming part of the Committee's FACA record and it's being retained for the life of the Committee, may affect its withholdability under FOIA. As noted above, FOIA requests for such documents will be discussed with OGC to determine the status of the documents under FOIA exemptions.

- Infrequently, the ACNW requires access to Secret and Confidential National Security Information and Restricted Data in conjunction with activities within its scope of responsibility. ACNW member and staff access to this information will be authorized on the basis of the individual's need to know in accordance with NRC procedures.

6. RESOLVING ACNW COMMENTS

ACNW comments will be transmitted to the Commission or to the EDO, as appropriate, with copies to the cognizant Office Director, NRC staff office coordinator, and staff contact. The NRC staff contact will ensure that copies are provided, as appropriate, to other NRC staff members.

The EDO will ensure consideration of ACNW comments by the NRC staff and will respond to ACNW comments in a timely manner. The EDO may elect to consider ACNW comments on proposed or draft documents (e.g., proposed rules, draft regulatory guides) following the close of the public comment period, as part of the process for resolving public comments. The Commission should have the ACNW views on major topics when it receives the staff views and recommendations. The NRC staff will take into account ACNW views on all rules and technical policy statements pertaining to nuclear safety matters. Staff papers should address all ACNW comments including those not endorsed by the staff.

The ACNW has a web site on which ACNW reports, meeting schedules and agendas, and meeting transcripts are posted. The ACNW will also post the EDO response to ACNW comments with the ACNW reports on this web site.

7. DEVIATIONS FROM THIS MOU

These procedures are established to facilitate NRC staff and ACNW interactions. Deviations from these procedures may at times be needed to carry out the NRC's mission. When this occurs, the procedures can be altered consistent with the needs of the NRC and the ACNW. Such changes will be implemented after being mutually agreed upon by the EDO and the Executive Director for ACRS/ACNW. The Executive Director for ACRS/ACNW will maintain a record of these deviations to provide a basis for future revisions of this MOU.

3/10/01
(Date)

/RA/
William D. Travers
Executive Director for Operations

3/12/01
(Date)

/RA/
John T. Larkins
Executive Director for ACRS/ACNW

MEMORANDUM OF UNDERSTANDING

PARTIES: Advisory Committee on Reactor Safeguards (ACRS)
Executive Director for the Advisory Committee on Reactor Safeguards (ACRS)
and the Advisory Committee on Nuclear Waste (ACNW)

Nuclear Regulatory Commission Staff (NRC)
Executive Director for Operations (EDO)

SUBJECT: ACRS PARTICIPATION IN THE DEVELOPMENT OF NRC RULES, SAFETY-
AND RISK-SIGNIFICANT GUIDANCE, LICENSING DECISIONS, AND
RESOLUTION OF TECHNICAL ISSUES

BACKGROUND:

The ACRS was established as a statutory Committee to the Atomic Energy Commission (AEC) by a 1957 amendment to the Atomic Energy Act of 1954. The functions of the Committee are described in Sections 29 and 182b of the Act. The Energy Reorganization Act of 1974 transferred the AEC licensing functions to the NRC, and the Committee has continued in the same advisory role to the NRC.

The ACRS reports directly to the Commission. It provides the Commission with independent reviews of, and advice on, the safety of proposed or existing NRC licensed reactor facilities and the adequacy of proposed safety standards. The ACRS reviews power reactor and fuel cycle facility license applications for which the NRC is responsible and the safety- and risk-significant NRC regulations and guidance relating to these facilities. On its own initiative, the ACRS may conduct reviews of specific generic matters or nuclear facility safety- and risk-significant items. The Committee also advises the Commission on safety- and risk-significant technical issues, and performs other duties as the Commission may request. Upon request from the DOE and with the consent of the Commission, the ACRS provides advice on U.S. Naval reactor designs and hazards associated with DOE nuclear activities and facilities. Upon request and with the consent of the Commission, the ACRS also provides technical advice to the Defense Nuclear Facilities Safety Board.

ACRS operations are governed by the Federal Advisory Committee Act (FACA), which is implemented through NRC regulations at 10 CFR Part 7. ACRS operational practices encourage the public, industry, state and local governments, and other stakeholders to become involved in Committee activities. The ACRS and the ACNW work cooperatively in reviewing matters of interest to the Commission and, where the Committees' responsibilities overlap, divide work in the manner that best serves the interests of the Commission.

PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to establish a process for ensuring that (1) the NRC staff solicits ACRS views early in the development of NRC rules and safety- and risk-significant guidance; in licensing decisions; and in resolution of technical issues, (2) the NRC staff keeps the ACRS informed of emerging issues, and (3) the ACRS responds to staff requests for review and comment in a timely manner. This MOU:

1. Identifies areas within the scope of ACRS responsibility.

- Establishes a process to enable the ACRS and the NRC staff to establish plans and schedules that address the needs of the Commission, the NRC staff, and the ACRS.
- Establishes a process for ensuring that ACRS reviews are done at a sufficiently early stage to permit effective and efficient interaction.

1. THE SCOPE OF ACRS RESPONSIBILITY

Areas within the ACRS scope of responsibility are identified in the following sections. The intent is to identify the areas of responsibility and not to imply any establishment of priorities. Priorities will be set by the Commission and identified in Commission directives and in the Committee's Action Plan.

a. NRC Regulations

The scope of ACRS responsibility encompasses the following parts of NRC regulations found in Title 10 of the Code of Federal Regulations:

- Part 20 Standards for Protection Against Radiation
- Part 21 Reporting of Defects and Noncompliance
- Part 26 Fitness for Duty Programs
- Part 50 Domestic Licensing of Production and Utilization Facilities
- Part 51 Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions
- Part 52 Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Plants
- Part 54 Requirements for Renewal of Operating Licenses for Nuclear Power Plants
- Part 55 Operators' Licenses
- Part 70 Domestic Licensing of Special Nuclear Material
- Part 72 Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste
- Part 73 Physical Protection of Plants and Materials
- Part 76 Certification of Gaseous Diffusion Plants
- Part 100 Reactor Site Criteria

b. Regulatory Activities

Regulatory activities that are within the scope of ACRS responsibility include:

- Reactor rules with safety- or risk-significance
- Reactor regulatory guides and other regulatory guidance with safety- or risk-significance
- Prioritization and resolution of generic safety issues
- License applications and applications for license renewals
- Risk-informed and performance-based regulation
- NRC-sponsored reactor research
- Reactor transient and accident analysis code certification
- Reactor licensee performance assessment and the analysis of plant operating experience
- Reactor regulatory burden reduction initiatives
- Development of regulatory requirements associated with the reactor use of new technology

2. COORDINATION BETWEEN THE NRC OFFICES, REGIONS, AND THE ACRS

An individual from the OEDO will be assigned responsibility for coordinating implementation of this MOU with NRC offices reporting to the EDO and with the ACRS. An NRC staff office coordinator will be established in NRR, RES, and NMSS to coordinate implementation of the provisions of this MOU for their office. Upon request from the OEDO, the office coordinators will collect and provide to the OEDO information for development of draft proposed ACRS agendas for the three months following the next ACRS meeting. The OEDO coordinator will prepare the draft proposed agendas. The NRC staff office coordinators and the OEDO coordinator will meet with cognizant ACRS staff before each ACRS meeting. At this meeting, further information will be discussed to finalize the proposed ACRS agendas for the three months following the next ACRS meeting. The Administrative Officer/OEDO will issue the proposed agendas on a monthly basis to the Executive Director for ACRS/ACNW.

The ACRS staff member who supports the ACRS Subcommittee with responsibility for the matter under review will serve as the ACRS contact for day-to-day interactions on that matter with the NRC staff. The NRC contact for a technical matter should be the NRC staff member who has the day-to-day technical responsibility for the item under ACRS consideration. Schedule and administrative matters should be coordinated through the NRC staff office coordinator. The NRC contact for a technical matter should strive to keep the cognizant ACRS staff contact up-to-date on NRC progress on the matter. This should include verbal communication and the transmittal of documents that provide the ACRS contact with an understanding of the technical issues.

Periodically, the ACRS may visit NRC Regional Offices or licensee facilities. Before arranging such visits, the ACRS staff will consult with the OEDO coordinator and will work through the responsible NRR and Regional Office project staff in making the necessary arrangements with the Region and licensees. When Regional Office staff are needed to support ACRS reviews, the request for this support will be made by the Executive Director for ACRS/ACNW to the Regional Administrator via the EDO.

3. EARLY INTERACTION AND SELECTION OF MATTERS FOR THE ACRS REVIEW

The EDO, with guidance from the Commission as appropriate, will identify matters requiring ACRS consideration in the early stages of development to allow sufficient time to permit effective and efficient review by the ACRS. Following discussions between the NRC staff office coordinators and the cognizant ACRS staff, the anticipated staff action will be included in the list of proposed ACRS agenda items provided in the EDO's monthly memorandum on proposed agenda items for the ACRS and the ACNW. The ACRS will inform the cognizant NRC staff office and the EDO's office on a timely basis whether it intends to review a specific matter. Decisions on whether to review will be made in accordance with Commission guidance, the needs of the EDO, and the recommendations of the responsible ACRS Subcommittee Chairman and the ACRS Planning and Procedures Subcommittee.

The ACRS will sometimes take up a matter for review on its own initiative with the agreement of the Commission. The ACRS will inform the EDO and the cognizant staff office when these activities are initiated and will coordinate these activities with the responsible NRC OEDO and staff office coordinators and staff.

The NRC staff will give the ACRS staff relevant information about papers being developed by the NRC staff for which there is to be no request for an ACRS review or information briefing. The EDO will send the ACRS a 90-day projection for such papers on a monthly basis. The NRC staff will work with the ACRS to enable the ACRS to identify its review interests.

4. ESTABLISHING A SCHEDULE FOR THE ACRS REVIEW

If the ACRS decides to review a specific matter, the response will be provided in a timely manner so that the Commission can have the benefit of the Committee's advice in making a decision on the matter. When the EDO has the authority for making the regulatory decision, the ACRS review will be performed before the EDO makes this decision. When a proposed regulatory action is to be published for public comment, the ACRS may review the matter both before and after public comment, as appropriate for the particular case. There may be circumstances where the ACRS will defer its review of a specific matter until after public comments have been received and addressed by the staff. In such cases, the Executive Director for ACRS/ACNW will notify the EDO. The ACRS review will normally occur after the Committee to Review Generic Requirements (CRGR) review such that the CRGR's findings will be available to the ACRS. The NRC staff should plan for this in its scheduling.

The cognizant NRC staff office will ensure that the schedule for development of a specific matter includes sufficient time for ACRS review. Staff should schedule ACRS presentations at least four weeks before the ACRS comments are desired. Subject to section 5.b, below, the

documents in support of presentations to the full ACRS Committee should be provided to the ACRS at least four weeks in advance of the presentation. When the documents cannot be provided within this time frame, the discussion will only be scheduled after agreement by the cognizant Office Director and the Executive Director for ACRS/ACNW. Documents needed for discussion of a matter at a Subcommittee meeting will be provided no later than two weeks before the Subcommittee meeting. Absent some extraordinary need, the Subcommittee meeting will not be held if the documents cannot be provided two weeks prior to the meeting. Exceptions will be made only with the agreement of the cognizant Office Director and the Executive Director for ACRS/ACNW. When the documents are so voluminous or complex as to preclude adequate Committee review in four weeks, or Subcommittee review in two weeks, the Executive Director for ACRS/ACNW will consult with the cognizant Office Director and establish other arrangements.

When a choice must be made between timely submission of documents to the Commission or submission first for ACRS review, the EDO and the Executive Director for ACRS/ACNW will consult with the Secretary of the Commission. It is expected that this will occur only in very unusual circumstances and that in these cases the Commission will make the decision as to the appropriate course of action.

5. SUBMITTING DOCUMENTS FOR ACRS REVIEW AND INFORMATION

a. Submittal of Documents

Twenty copies of documents related to a specific matter will be transmitted to the ACRS by the cognizant NRC Division Director by way of a memorandum addressed to the Executive Director for ACRS/ACNW requesting appropriate ACRS action. When sending a specific matter to the ACRS for review, the cognizant staff office will ensure that the ACRS is provided with copies of related documents (e.g., public comments and the staff's resolution of these comments, CRGR comments, if any, and, as appropriate, directly related differing professional opinions and/or differing professional views).

Five copies of documents related to a specific matter will also be provided to the ACRS for information by the NRC staff contact at the following stages, when applicable, with a memorandum addressed to the Executive Director for ACRS/ACNW, indicating that the documents are being sent to the ACRS for information:

- When the documents are sent to the Federal Register to be published for public comment.
- When the documents are sent to the Federal Register to be published as effective documents.

The Executive Director for ACRS/ACNW will define an ACRS staff user group for access to NRC staff documents in ADAMS. This group will be provided "viewer" rights by NRC staff to documents within the purview of the ACRS and prepared by offices reporting to the EDO when the documents are placed into ADAMS. This access is for the purpose of keeping individual ACRS staff members up-to-date on NRC staff actions that effect their area of responsibility.

Access to or discussion of such documents by ACRS staff with ACRS members, or with other persons who are not regular Government employees, is subject to applicable provisions of section 5.b. and to guidance from the Office of the General Counsel.

b. Discussion and Handling of Restricted Distribution Documents

When the ACRS and the NRC staff have discussions on matters that involve predecisional information the following procedures will be used:

- NRC staff discussions with the ACRS of issues addressed in NRC predecisional or other restricted distribution documents will be open to the public, unless a Government in the Sunshine Act exemption applies.² Open discussion of agency matters facilitates external stakeholder input and provides an opportunity for the public to better understand Agency decisions.
- Discussion of the contents of a predecisional or other restricted distribution document with a member of the public or in a public meeting may result in the loss of the ability to withhold all or part of the document under Freedom of Information Act (FOIA) exemptions. To avoid the disclosure to the public of the contents of an agency predecisional or other restricted distribution document during NRC staff discussions with the ACRS, the contents of such a document will not be discussed at an open ACRS meeting, unless the discussion of the document at the meeting has been approved by the appropriate agency official, as described below.
- Issues that are discussed in a predecisional document can sometimes be addressed in a Committee meeting without reference to the contents of the predecisional document itself. In such circumstances, the discussion is not likely to compromise the ability to withhold the predecisional or other restricted distribution document under an FOIA exemption.
- ACRS meetings can be closed on such grounds as discussion of proprietary material under exemptions allowed by FACA. Members of the public may request a closed meeting if they believe an exemption applicable to them authorizes closure. The NRC staff may also request closure of a meeting, under the exemptions allowed by FACA. Requests by members of the public and NRC staff to close meetings will be considered under applicable law. The closing of ACRS meetings requires a written request to the Chairman of the Commission, or the Chairman's designee, and review by the Office of the General Counsel, in accordance with 10 CFR 7.15. When requests for closure are received by the ACRS, the ACRS staff may need the assistance of the Office of the General Counsel (OGC) and NRC staff technical experts on an expedited basis to make accurate judgments as to what information should be protected.

² Under the FACA, meetings of advisory committees are generally required to be open and documents provided to or prepared by advisory committees are generally required to be made available for public inspection and copying. However, FACA also provides that portions of advisory committee meetings may be closed to the public if they fall within exemptions contained in the Government in the Sunshine Act. Similarly, documents made available to or prepared for or by an advisory committee may be withheld from the public if they fall within an exemption contained in the Freedom of Information Act. There are a number of exemptions listed in the Sunshine Act and the Freedom of Information Act and assistance in their interpretation may be obtained from the Office of the General Counsel.

- When the ACRS wishes to discuss all or part of a predecisional document at a meeting that is not exempt from the open meeting requirements of FACA, cognizant NRC staff will participate in an open ACRS Subcommittee or full Committee meeting if prior approval has been obtained from the Commission or its designee (when the Commission itself is to make the final decision on the matter addressed in the paper), or from the EDO (for other predecisional documents originating from the staff).
- In those cases where the Commission or the EDO (as applicable) has approved discussion of all or part of a predecisional document at an open meeting of the ACRS, the document may be transmitted to the ACRS staff by the cognizant Division Director for review by the Committee. The transmitted documents will be clearly marked as predecisional. Other applicable restrictions (e.g., proprietary information) on the release to the public of documents submitted to the ACRS should also be clearly marked on the documents to facilitate their proper storage and handling.
- All documents used by the Committee in its deliberations are required to be retained by the Committee as part of its FACA records and will be retained for the life of the Committee. Requests for such documents by members of the public will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- In those cases where the ACRS will discuss issues addressed in a predecisional document, but will not disclose the contents of the document, the document may be transmitted to the ACRS staff by the cognizant Division Director for transmittal to individual Committee members as background information. As long as any discussion of the issues that may also be addressed in such a document does not disclose the contents of the document in a meeting open to the public, the withholdability of the document under FOIA is not likely to be compromised. However, the use of the document itself in the Committee's deliberations will result in the document becoming part of the Committee's FACA record and its being retained for the life of the Committee, may affect its withholdability under FOIA. As noted above, FOIA requests for such documents will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- Infrequently, the ACRS requires access to Secret and Confidential National Security Information and Restricted Data in conjunction with activities within its scope of responsibility. ACRS member and staff access to this information will be authorized on the basis of the individual's need to know in accordance with NRC procedures.

6. RESOLVING ACRS COMMENTS

ACRS comments will be transmitted to the Commission or to the EDO, as appropriate, with copies to the cognizant Office Director, NRC staff office coordinator, and staff contact. The NRC staff contact will ensure that copies are provided, as appropriate, to other NRC staff members.

The EDO will ensure consideration of ACRS comments by the NRC staff and will respond to ACRS comments in a timely manner. The EDO may elect to consider ACRS comments on proposed or draft documents (e.g., proposed rules, draft regulatory guides) following the close of the public comment period as part of the process for resolving public comments. The Commission should have the ACRS views on major topics when it receives the staff views and recommendations. The NRC staff will take into account ACRS views on all rules and technical policy statements pertaining to nuclear safety matters. Staff papers should address all ACRS comments including those not endorsed by the staff.

The ACRS has a web site on which ACRS reports, meeting schedules and agendas, and meeting transcripts are posted. The ACRS will also post the EDO response to ACRS comments with the ACRS reports on this web site.

7. DEVIATIONS FROM THIS MOU

These procedures are established to facilitate NRC staff and ACRS interactions. Deviations from these procedures may at times be needed to carry out the NRC's mission. When this occurs, the procedures can be altered consistent with the needs of the NRC and the ACRS. Such changes will be implemented after being mutually agreed upon by the EDO and the Executive Director for ACRS/ACNW. The Executive Director for ACRS/ACNW will maintain a record of these deviations to provide a basis for future revisions of this MOU.

3/10/01
(Date)

/RA/
William D. Travers
Executive Director for Operations

3/12/01
(Date)

/RA/
John T. Larkins
Executive Director for ACRS/ACNW