

AUGUST 23, 2007

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES NUCLEAR REGULATORY COMMISSION
AND THE
UNITED STATES DEPARTMENT OF ENERGY

**PROTECTION OF CLASSIFIED INFORMATION
AND RELATED SECURITY ACTIVITIES AT
URANIUM ENRICHMENT FACILITIES**

I. BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing and regulating all commercial uranium enrichment facilities operating in the United States.

Based on existing experience and anticipated activity, an entity that owns or operates a uranium enrichment facility under NRC license and regulation will need to process classified information at its uranium enrichment facility. The National Industrial Security Program (NISP), established by Executive Order (E.O.) 12829 for the protection of classified information classified under E.O. 12958, as amended, or its successor or predecessor orders, and the Atomic Energy Act of 1954, as amended, requires that classified information can only be processed on secure information technology (IT) systems or networks that have been accredited by certain agencies of the Federal government, including NRC and the U.S. Department of Energy (DOE). The NISP is set forth in Department of Defense (DoD) 5220.22-M, and requires that a Federal government agency agree to act as the Designated Approval Authority (DAA) for a specific classified IT system. The DAA inspects the classified IT system to determine that it is installed and capable of operating in accordance with all applicable security requirements and then issues an accreditation statement prior to system operation. Accordingly, these entities will need a Federal government agency to act as the DAA for their classified IT systems.

NRC is responsible for the licensing and regulation of commercial uranium enrichment facilities operating in the United States. As such, NRC is responsible for enforcing any violations of the licenses issued to these facilities, including any security violations. Therefore, in order to avoid the appearance of a conflict of interest, NRC requested that DOE act as the DAA for these uranium enrichment facilities.

NRC, mindful of DOE's unique expertise in protecting classified matter within its own nuclear programs, determined that DOE would be the most qualified Federal entity to serve as DAA for commercial uranium enrichment facilities.

Upon request and a formal designation from NRC, DOE agrees to serve as the DAA for specified uranium enrichment facilities and provide technical assistance on related security matters pursuant to an interagency agreement (IA) with NRC for the specified uranium enrichment facility. NRC anticipates

a current and future need for assistance from DOE as the DAA for commercial uranium enrichment facilities. The facilities for which NRC requires such DOE assistance will be specified in an IA between NRC and DOE, and NRC will formally designate DOE as the DAA for the specified uranium enrichment facility through the IA.

NRC intends to issue orders to uranium enrichment facilities that possess classified matter to implement additional security measures for IT systems, an operational security program (OPSEC), a technical surveillance countermeasures program (TSCM), and a Telecommunications Electronic Materials Protected from Emanating Spurious Transmissions (TEMPEST) program. NRC requires technical assistance from DOE subject matter experts for providing oversight of these areas.

II. AUTHORITY

NRC enters into this Memorandum of Understanding (MOU) under the authority of Section 205(c) of the Energy Reorganization Act of 1974, 42 U.S.C. § 5845(c). DOE enters into this MOU under the authority of Section 646 of the Department of Energy Organization Act (Pub. L. 95-91, as amended; 42 U.S.C. § 7256).

III. PURPOSE AND SCOPE

- A. NRC and DOE enter into this MOU to define and set forth their mutual understanding of the assistance that DOE will provide NRC in carrying out its responsibilities with respect to certain classified IT systems and related security activities at specified uranium enrichment facilities licensed or otherwise regulated by NRC.
- B. DOE agrees to provide NRC with assistance in carrying out NRC's responsibilities with respect to certain classified IT systems and related security activities at specified contractors, subcontractors, and vendors of these uranium enrichment facilities licensed or otherwise regulated by NRC.
- C. This MOU is neither a fiscal nor a funds obligating document. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange, transfer, or reimburse any funds, services, or supplies, or to enter into any contract, assistance agreement, interagency agreement, or any other financial obligation.
- D. Nothing in this MOU shall restrict or otherwise limit the authority of either NRC or DOE to exercise its full regulatory authority, including both inspection and enforcement authority within each agency's jurisdiction.
- E. This MOU is strictly for the internal management purposes of each of the parties. It is not a legally enforceable document and shall not be construed to create any legal obligation on the part of either party or to provide a private right or cause of action for or by any person or entity.

- F. This MOU in no way restricts either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.
- G. This MOU applies solely to the activities described in this agreement related to uranium enrichment facilities, except those facilities identified below in subsection H. Nothing in this MOU applies to or establishes a precedent for any other MOU, matter, or agreement, including any other existing or future agreement between DOE and NRC.
- H. On October 28, 1997, NRC and DOE executed the "Memorandum of Understanding between the Nuclear Regulatory Commission and the Department of Energy on Cooperation Regarding the Gaseous Diffusion Plants." On March 24, 2004, NRC and DOE executed the "Memorandum of Understanding between the Department of Energy and the Nuclear Regulatory Commission – Cooperation Regarding the Gas Centrifuge Lead Cascade Facilities at the Portsmouth Gaseous Diffusion Plant Site." On April 13, 2007 NRC and DOE executed the "Memorandum of Understanding between the Department of Energy and the Nuclear Regulatory Commission – Cooperation Regarding the American Centrifuge Plant in Piketon, Ohio." Nothing in this MOU is intended to restrict, expand or otherwise alter the terms of the October 28, 1997, the March 24, 2004, or the April 13, 2007, MOUs.
- I. All agreements herein are subject to, and will be carried out in compliance with, all applicable laws, regulations, and other legal requirements.

IV. ROLES AND RESPONSIBILITIES

A. NRC

1. NRC shall serve as the Cognizant Security Authority (CSA) for specified uranium enrichment facilities licensed or otherwise regulated by NRC that require a facility clearance for access to classified information. As the CSA, NRC shall be responsible for issuing any required individual security clearances and facility clearances.
2. NRC shall review and approve a security plan for specified uranium enrichment facilities licensed or otherwise regulated by NRC. This security plan shall set forth specific requirements for implementation of a classified matter protection program, to include IT security, at specified uranium enrichment facilities licensed or otherwise regulated by NRC.
3. The NRC-approved security plan shall include specific requirements for IT systems, an OPSEC program, a TSCM program, and a TEMPEST program to be implemented at specified uranium enrichment facilities licensed or otherwise regulated by NRC.

B. DOE

1. DOE shall serve, pursuant to a formal designation from NRC in a subsequent IA, as the DAA for classified IT systems at specified uranium enrichment facilities licensed or otherwise regulated by NRC. As DAA, DOE shall inspect these classified IT systems to determine that they are installed and capable of operating in accordance with all applicable security requirements and provide the written results of these inspections and an accreditation statement to NRC.

In the event DOE has provided an accreditation statement to NRC and, upon subsequent review or inspection, determines that the accredited system is not capable of operating in accordance with applicable security requirements, DOE shall make a determination regarding continuing or revoking the accreditation and shall promptly notify NRC. Upon such notification from DOE, NRC shall take prompt and appropriate action to enforce DOE's determination on accreditation.

2. DOE shall provide, pursuant to the subsequent IAs, technical assistance to NRC in its review, evaluation, and inspection of classified IT systems and OPSEC, TSCM, and TEMPEST programs implemented at specified uranium enrichment facilities licensed or otherwise regulated by NRC.
3. DOE shall prepare a draft and final work plan describing the classified matter protection program evaluations and inspections that it plans to perform in carrying out its responsibilities under this MOU. This work plan shall set forth the standards to be used in conducting the evaluations and inspections.
4. DOE shall prepare and submit a final report to NRC summarizing the evaluations and inspections performed by DOE over the previous year. This report shall identify any compliance issues encountered at each facility inspected.

V. RESOLUTION OF DISPUTES

- A. NRC and DOE shall work together to amicably resolve any disputes or disagreements that might arise over matters within the scope of this MOU. Resolution of differences between NRC staff and DOE staff will be the initial responsibility respectively of the chief of the responsible branch within NRC and the DOE Regulatory Oversight Manager in the DOE Oak Ridge Office.
- B. If the issue cannot be resolved at the staff level, NRC and DOE agree to refer the matter within thirty (30) days to the Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, NRC, and the Assistant Manager for Nuclear Fuel Supply, Oak Ridge Office, DOE.

VI. POINTS OF CONTACT

- A. The principal senior management contacts for this MOU will be DOE's Assistant Manager for Nuclear Fuel Supply, Oak Ridge Office, and NRC's Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.
- B. Identification of these contacts is not intended to restrict communication between DOE and NRC staff members on technical and other day-to-day activities.

VII. EFFECTIVE DATE, MODIFICATION, TERMINATION

- A. This MOU shall become effective upon the signing of this document by both parties. This MOU shall remain in effect for five years from the date of signing by both parties unless terminated beforehand in accordance with the procedures set forth in this MOU.
- B. This MOU may be modified or amended by mutual agreement of NRC and DOE. All modifications or amendments of this MOU must be in writing and signed by the authorized representative of NRC and DOE.
- C. Either party may terminate this MOU by providing the other party with written notification of its intent to terminate. Such written notification must be provided at least 180 days prior to the effective date of the termination of this MOU.
- D. This MOU may be renewed or extended by the written mutual agreement of NRC and DOE.

VIII. SEPARABILITY

If any provision of this MOU, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this MOU and the application of the remaining provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission

For the U.S. Department of Energy

/RA/

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