

**MEMORANDUM OF UNDERSTANDING
AMONG
THE DEPARTMENT OF HOMELAND SECURITY,
THE DEPARTMENT OF TRANSPORTATION, AND
THE U.S. NUCLEAR REGULATORY COMMISSION**

CONCERNING

**COOPERATION ON RADIOACTIVE MATERIALS TRANSPORTATION
SECURITY**

I. PARTIES

The parties to this memorandum of understanding (MOU) are the Department of Homeland Security (DHS), the Department of Transportation (DOT), and the United States (U.S.) Nuclear Regulatory Commission (NRC), hereafter referred to as the Parties. When designated officials are identified in various sections of this MOU, the officials include their designees. DHS and DOT participation in the MOU includes the participation of their relevant component agencies: the Transportation Security Administration (TSA), U.S. Customs and Border Protection (CBP), and the U.S. Coast Guard (USCG) for DHS; and the Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), and Federal Railroad Administration (FRA) for DOT.

II. PURPOSE

This MOU establishes a framework for allowing the Parties to coordinate, to the maximum extent practicable, their respective responsibilities and activities related to the secure transportation of radioactive materials within the U.S. or across U.S. borders. Coordination among the Parties will achieve the following goals:

- enhance collaborative exchanges;
- promote the leveraging of mutual interests;
- provide a forum for interdepartmental communication;
- reduce duplication of effort in areas of shared interest;
- maximize the success of efforts to develop capabilities that serve the needs of the Commission and the Departments in the execution of their homeland security and civil support missions; and
- promote the standardization of approach and policy on the transportation security of radioactive materials.

The goal of this MOU is to ensure that the transportation of radioactive material in the U.S. and across U.S. borders is carried out in a secure manner that protects the public health and safety; and in a manner that is not inimical to the common defense and security of the U.S.

III. AUTHORITIES

- a. DHS enters into this MOU pursuant to 6 U.S.C. §112(b); 49 U.S.C. §114; Homeland Security Presidential Directive (HSPD)-5; Presidential Policy Directive (PPD)-8 and PPD-21.
- b. DOT enters into this MOU pursuant to 49 U.S.C. §301, PPD-8 and PPD-21.
- c. Presidential Policy Directive (PPD-21), February 12, 2013, *Critical Infrastructure Security and Resilience* advances a national unity effort to strengthen and maintain secure, functioning and resilient critical infrastructure. It directs that the NRC regulate the transport of radioactive material and coordinate with, as appropriate, other Federal parties during these activities.
- d. In accordance with the Homeland Security Act of 2002, Public Law No. 107-296, 116 Stat. 2135, November 25, 2002 (Homeland Security Act) and PPD-21, DHS and DOT collaborate on security activities for all modes of transportation within the U.S. or across U.S. borders. Pursuant to the Aviation and Transportation Security Act, Public Law 107-71, 115 Stat. 597, November 19, 2001 (ATSA) and specific delegation by the Secretary of Homeland Security (currently DHS Delegation Number 7060.2), TSA acts as the lead Federal entity, with DOT collaboration, for transportation security, including hazardous materials and pipeline security.
- e. The NRC, under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), and Section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of "byproduct material," "source material," and "special nuclear material" (as defined in 42 U.S.C. 2014). The NRC's authority to license air shipment(s) of plutonium is further governed by Section 201 of Public Law 94-79 (42 USC 5841 note), Section 5062 of Public Law 100-202, and Public Law 100-203.
- f. Nothing in this MOU shall diminish or otherwise affect the authority and activities of the respective Offices of Inspector General for NRC, DHS and DOT, consistent with the requirements of the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101, October 12, 1978, 5 U.S.C. App 3.

IV. BACKGROUND

Through legislative authorities and departmental delegations, TSA supports DHS' counterterrorism and critical infrastructure protection missions. TSA enters into this memorandum pursuant to 49 U.S.C. §§ 106(m) and 114(m); the Homeland Security Act, § 430; the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; PPD: Critical Infrastructure Security and Resilience (PPD-21), February 12, 2013; and PPD: National Preparedness (PPD-8), March 30, 2011. DHS and DOT were delegated responsibilities as Co-Sector-Specific Agencies for the Transportation Systems Sector under PPD-21. In addition, at the direction of the Secretary of Homeland Security, TSA has primary responsibility for developing the National Strategy for Transportation Security jointly with the Secretary of Transportation. 49 U.S.C. 114(s)(2).

CBP supports the mission of DHS and enforces hundreds of U.S. laws and regulations at the border, including those regarding the transportation of hazardous materials across the U.S. border. In general, border search authority permits "customs officers" to search without a warrant and without any suspicion any person, conveyance, or container that crosses the U.S. border. *See, e.g.*, 19 U.S.C. §§ 482, 1401, 1496, 1499, 1581, 1582.

The USCG is responsible for overseeing regulatory compliance in the transportation of hazardous materials by water. (Currently DHS Delegation No. 0170, Sec. 2(99) & 2(100); see also 6 U.S.C. 458(b), 551(d)(2)).

PHMSA is responsible for promulgating and enforcing regulations and administering a national safety and security program of multimodal hazardous materials (hazmat) transportation. PHMSA is also responsible for overseeing regulatory compliance in the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of multi-modal containers which are represented, marked, certified, or sold for use in the transportation of hazardous materials. 49 CFR § 1.97(b). Within DOT, except as provided in 49 CFR § 1.97(b)(2), enforcement authority has been delegated to FAA, FMCSA, FRA, and PHMSA.

FAA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by air. 49 CFR § 1.83(d).

FMCSA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of containers which are represented, marked, certified, or sold for use in bulk transportation of hazardous materials by highway. 49 CFR § 1.87(d).

FRA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance,

reconditioning, repair or testing of containers which are represented, marked, certified, or sold for use in bulk transportation of hazardous materials by railroad. 49 CFR § 1.89(j).

Under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), the NRC regulates the possession, use and transfer of civilian radioactive material and is empowered to establish by rule or order, and to enforce such standards to govern these uses as the Commission may deem necessary or desirable in order to protect the common defense and security and promote the public health and safety of the U.S.

The NRC, under Section 204 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), identifies the NRC's Director of Nuclear Material Safety and Safeguards as performing transportation security functions including:

1. Principal licensing and regulation involving all licensed facilities and materials associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.
2. Review safety and safeguards of all such licensed facilities and materials; such reviews shall include, but not be limited to:
 - a. monitoring, testing, and recommending upgrading of internal accounting systems for licensed special nuclear and other nuclear materials;
 - b. developing, in consultation and coordination with the Energy Research and Development Administration (now the Department of Energy), contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended.

V. COOPERATIVE FRAMEWORK

Consistent with the terms and conditions of this MOU, the Parties will coordinate, to the maximum extent practicable, their regulatory responsibilities related to the secure transportation of radioactive materials that pose a significant risk to public health and safety and the environment or the common defense and security.

The Parties recognize that the topical areas set forth in Attachment 1 of this MOU are important to development and deployment of an enhanced security strategy for the transportation of risk significant radioactive material in the U.S. and across U.S. borders. For the purposes of this MOU, the term "risk significant radioactive material" means radioactive material that requires security measures to be applied to it above prudent management practices. *See e.g.,* the International Atomic Energy Agency's Nuclear

Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (Information Circular/225/Revision 5). In addition, the Parties will agree on the radioactive material, within the statutory and regulatory jurisdiction of a Party, for implementation under this MOU, on a case-by-case basis.

Attachment 1 of the MOU describes the infrastructure of the desired interactions between the Parties to this MOU. A series of annexes will be developed after approval of the MOU to establish the working arrangements between the NRC and the relevant component agencies within the signatory Departments. Working arrangements will provide the details of these interactions.

VI. IMPLEMENTATION

The Parties to this MOU commit themselves or their component agencies, as appropriate, to coordinate their programs and activities, to the maximum extent practicable, in order to improve transportation security of radioactive material in the U.S. or across U.S. borders while minimizing duplication, disruptions to transportation operations, and unnecessary costs imposed on transportation stakeholders and the public.

After the MOU has been signed, the Parties will support the development of annexes or work plans among the appropriate component agencies of each Department and the NRC to specifically delineate roles, responsibilities, resources, and actions needed to advance execution of subsections "a" through "l" in Attachment 1. To that end, each Party will designate one or more members to participate in a working group to develop a multi-year action plan, including specific timelines for implementing the Parties' general commitments, as set forth in Attachment 1.

VII. COORDINATION MEETINGS

The Parties will establish, at the minimum of one per year, regularly-scheduled coordination meetings, as appropriate.

VIII. GENERAL PROVISIONS

a. Principal Agency Contacts. Subject to updates by the Parties, Attachment 2 has the designated points of contact for this MOU.

b. Pre-Existing Agreements. Pre-existing agreements, or annexes between components of DHS, elements of DOT, or elements of NRC, such as the MOU between DHS and DOT dated September 28, 2004, or the MOU between DOT and NRC dated July 2, 1979, are not superseded by this MOU, and remain in effect until rescinded, modified, or incorporated into annexes to this MOU. DOT, DHS and NRC will review these pre-existing agreements to determine whether to amend, continue, or revoke them.

c. **Severability.** Nothing in this MOU or any supplement thereto is intended to alter or conflict with statutory provisions, regulations, orders, or directives of DHS, DOT, NRC, or any other Federal agency or entity. If a provision of this MOU, or any supplement thereto, is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU, and any supplement thereto, will remain in full force and effect.

d. **Rights and Benefits.** Nothing in this MOU is intended to diminish or otherwise affect the authority of the NRC, DOT or DHS, or of their respective component agencies, to carry out statutory, regulatory, or other official functions; nor is this MOU intended to create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the U.S., its departments, agencies, officers, or employees, state agencies or officers carrying out programs authorized under Federal law, or any other person.

e. **Period of Agreement /Termination.** This MOU shall be effective as of the date of final signature by the Parties and remain in effect until terminated by NRC, DOT, or DHS. The Parties agree to review this MOU every 5 years. This review may be waived if the Parties mutually agree, in writing, that such a review is not necessary. Parties may terminate this MOU by providing written notice at a minimum of 60 calendar days prior to the desired termination date, to the respective contacts listed in Attachment 2 herein.

f. **Reimbursement.** Unless otherwise agreed to under the provisions of Section h.3 of Attachment 1, each Party will be responsible for its own expenses incurred in carrying out activities under this MOU. The Parties agree to resolve any dispute over reimbursement for such activities through mutual negotiation. If the Parties are unable to resolve such a dispute, they agree to have the signatories to this MOU, or their approved designees, resolve the issue.

g. **Amendment and Modification.** If, in addition to the matters specifically covered in this MOU, any party identifies additional matters associated with the secure transportation of radioactive material that should be specifically included in this MOU, that party will request that the MOU be amended accordingly, and the Parties will meet to discuss the need for such an amendment. Any agreed upon amendment or modification must be in writing, and executed by the appropriate representatives of DHS, NRC, and DOT.

APPROVED BY:



U.S. NUCLEAR REGULATORY COMMISSION
Chairman Allison Macfarlane

12/20/13

Date



DEPARTMENT OF HOMELAND SECURITY
Secretary

1/17/15

Date



DEPARTMENT OF TRANSPORTATION
Secretary

5-24-14

Date

TOPICAL AREAS

This enclosure to the Memorandum of Understanding (MOU) describes the infrastructure of the desired interactions between the U.S. Nuclear Regulatory Commission (NRC) and the departments. A series of annexes will be developed after approval of the MOU to establish the working arrangements between the NRC and the relevant component agencies within the signatory departments. Working arrangements will provide the details of these interactions.

- a. **Risk Assessments.** The Parties will inform the other agencies when assessments related to the transportation of radioactive materials are being planned, in an effort to coordinate such efforts, as appropriate.

The Parties agree to support the sharing, to the maximum extent practicable and as permitted under the law, of all relevant information collected in the course of respective risk assessments undertaken by them or their component agencies, and their respective Office of the Inspector General (OIG). Relevant information could include, but is not limited to, information collected in the course of security inspections and assessments, reviews of security plans, and oversight of the activities of transportation of carriers, shippers, and receivers.

The Parties agree to the coordination, to the maximum extent practicable and as permitted under the law, of measures derived from safety inspections and assessments to evaluate whether they conflict with, or adversely affect, current or planned security requirements.

The parties agree to the coordination of implementation of any recommendations developed by them or their component agencies as a result of their respective inspections and assessments to ensure that those recommendations do not adversely impact the safe and secure transportation of radioactive materials.

- b. **Strategic Planning.** Strategic planning will be based on risk. The parties will strive for consensus concerning measures for the transportation of radioactive material that establish and maintain risk at acceptable levels and minimize the consequences of security events. The parties will support the sharing of initiatives and activities among themselves or their component agencies for achieving identified performance security goals, as appropriate.
- c. **Standards, Regulations, Guidelines, Advisories, Orders, and Directives.** To the maximum extent practicable, the parties will coordinate in the development of standards, regulations, guidelines, advisories, orders, and directives affecting the transportation of radioactive materials.
- d. **Inspections and Enforcement.** The parties will promote coordination among themselves and their component agencies regarding inspection and enforcement activities, with the objective of optimizing available resources and maximizing communications on areas of mutual interest. Nothing in this MOU shall limit any party from taking the appropriate response, inspection, or enforcement action within the scope of its regulatory authority and jurisdiction.

The parties will develop procedures for the referral of safety and security issues and will develop specific plans for closer coordination in the deployment and use of inspectors to facilities within the parties' respective jurisdictions. Under specific working arrangements, the NRC will act as the point of contact to facilitate communications between licensed facilities and the parties to this MOU to support inspection and enforcement efforts, and completion of any requirements associated with access to the facility (e.g., site access training).

- e. **Technical Support.** The parties recognize that exigent circumstances or other contingencies may tax available security resources. In these situations, any of the parties may seek to supplement its resources with those of its partners. When assistance is necessary to develop, support, staff, implement, or enforce transportation security regulations, orders, directives, plans, programs, or other measures, or to conduct security reviews (e.g., during a period of an elevated security threat), a party's request for assistance must be made in writing. If appropriate, the written request should be in accordance with Enclosure 1, h.3., herein.
- f. **Sharing Information During an Emergency Response.** The parties may participate in established emergency response procedures involving the transportation of radioactive materials. However, the parties acknowledge in this MOU that they require timely information during emergencies and commit to promptly sharing information about emergency situations that implicate the missions and interests of the other parties, as appropriate. Information in this context includes both the initial incident report and ongoing information about incident developments. The timely sharing of such information serves the public interest in the operation of a secure and safe national transportation system.
- g. **Legislative Matters.** To the maximum extent practicable, and in accordance with each agency's authorities and established policies, the parties agree to discuss legislative matters of mutual concern affecting the secure transport of radioactive materials.
- h. **Budget.**
 - 1. All activities pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.
 - 2. This MOU is neither a fiscal nor a funds obligating document. Nothing in this MOU authorizes or is intended to obligate any party to expend, exchange, or reimburse funds, services or supplies, or to transfer or receive anything of value, or to enter into any contract, assistance agreement, interagency agreement or other financial obligation.
 - 3. Goods and services shall be provided under this MOU only after an appropriate Interagency Agreement (IA) has been negotiated and signed by an appropriate representative of each party authorized to execute the IA. Upon signature by each party's representative, the IA shall constitute a valid order under the Economy Act of 1932, as amended (31 USC § 1535), or other appropriate funding mechanism, as specified in the IA.
 - 4. This MOU shall not be construed to create any legal obligation on the part of any Party. This MOU shall not be construed to provide a private right of action for or by any entity or person.

5. Consistent with each Party's established policies, procedures, and budget requirements, the parties agree to consult throughout the budget development, planning, and execution process concerning funding for projects affecting the secure transportation of radioactive material, in order to minimize unnecessary duplication of effort and to provide an aligned position for the funding of such projects.
- i. **Communication.** The parties recognize the critical importance of regular, timely, and open communication, and commit to establishing strong lines of communication among the NRC and the appropriate component agencies of the Department of Transportation (DOT) and the Department of Homeland Security (DHS). In furtherance of this recognition (as deemed necessary by that party), each Party will designate appropriate officials to serve as points of contact for items of mutual concern and benefit. As appropriate, the parties will seek to leverage existing interagency forums and partnership frameworks that foster integrated, collaborative engagement and interactions. The Radiation Source Protection and Security Task Force, Government Coordinating Council, Critical Infrastructure Partnership Advisory Council, and the Federal Senior Leadership Council are among a few suggested bodies whose objective is to drive enhanced communications and coordination among Federal departments and agencies that have a role in the secure transportation of radioactive materials.
- j. **Intelligence and Information Sharing**
 1. The parties will cooperate, to the extent permitted by law, in sharing intelligence, security, and threat information affecting the secure transport of radioactive materials. The parties will designate appropriate points of contact and methods and means to effect such communication in accordance with applicable statutes and executive orders to ensure the protection of classified and sensitive unclassified information.
 2. Consistent with their respective authorities and established policies, the parties will promptly report security events related to the transport of radioactive materials to all parties. These events shall include, but not be limited to, incidents of theft, diversion, or sabotage of radioactive material(s) in transport. The parties will develop protocols and designate appropriate points of contact for prompt reporting of security-related incidents to each other. Consistent with the National Response Framework, the parties will collaborate on response plans for security-related incidents involving theft, diversion, or sabotage of radioactive materials in transport, and will develop coordination plans for enforcement actions and investigations. The plans will identify roles and responsibilities and establish protocols for occasions where joint investigations are appropriate and necessary. These exchanges will include appropriate notifications to the OIG identified at Section III.f of the MOU.
- k. **Background Investigations.** Under existing statutory authorities, NRC and DHS can require fingerprinting identifications and perform background investigations of individuals with access or control over radioactive materials. Under certain conditions, DOT regulations require drivers of hazardous material to comply with the Transportation Security Administration access authorization requirements. In order to avoid duplicative requirements on individuals, each Party will consider background investigation reciprocity where appropriate and in accordance with applicable laws and regulations. The parties will review their respective individual background investigation and

fingerprinting programs, if applicable, to identify those areas where the program needs are essentially the same and reciprocity can be applied. This would only occur if the fingerprinting and background check is related to the transportation of radioactive materials.

- I. Cooperative Research Programs. The parties will conduct a review of their recently completed and ongoing safety- and security-related projects and programs to identify opportunities to collaborate on research designed to improve the safety and security of transportation of radioactive materials. The parties will establish protocols for ongoing information sharing and participation in their respective research programs.

Points of contact for the Memorandum of Understanding:

Transportation Security Administration
Assistant Administrator
Office of Security Policy and Industry Engagement (OSPIE)
601 South 12th Street
Arlington, VA 20598
Phone (571) 227-9023
Fax (571) 227-2935

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Associate Administrator for Hazardous Materials Safety
East Building, 2nd Floor
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone (202) 366-0656
Fax (202) 366-5713

U.S. Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Associate Administrator for Enforcement
1200 New Jersey Avenue, SE
West Building, 6th Floor
Washington, DC 20590

U.S. Department of Transportation
Federal Railroad Administration
Director of the Office of Safety Assurance and Compliance
1200 New Jersey Avenue, SE
West Building, 3rd Floor
Washington, DC 20590

U.S. Customs and Border Protection
ATTN: Executive Director, Cargo and Conveyance Security Division
Office of Field Operations
1300 Pennsylvania Ave N.W.
Washington, DC 20229-1015
877-227-5511

U.S. Department of Homeland Security
U.S. Coast Guard
Assistant Commandant for Prevention Policy (CG-5P)
2100 Second Street, SW, Stop 7581
Washington, DC 20593-7581

U.S. Nuclear Regulatory Commission
ATTN: Director, Division of Security Policy
Office of Nuclear Security and Incident Response
Washington D.C. 20555
Phone (301) 287-3598
Fax (301) 287-9346

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NUCLEAR REGULATORY COMMISSION
AND
THE DEPARTMENT OF HOMELAND SECURITY
REGARDING
CONSULTATION CONCERNING POTENTIAL VULNERABILITIES
OF THE LOCATION OF PROPOSED NEW UTILIZATION FACILITIES**

I. Purpose

This Memorandum of Understanding (MOU) establishes a process to implement the provisions of Section 657 of the Energy Policy Act of 2005 (EPA), Pub. L. 109-58, 119 Stat. 594, 814 (2005). Section 657 states:

SEC. 657. DEPARTMENT OF HOMELAND SECURITY CONSULTATION.
Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

II. Background

Nuclear Regulatory Commission

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, the NRC is responsible for licensing and regulating the construction and operation of commercial nuclear power plants (known as "utilization facilities") in the United States to protect the health and safety of the public and to promote the common defense and security. In conducting its review of applications for such facilities pursuant to the Commission's implementing regulations in 10 C.F.R. Parts 50 and 52, the NRC must, among other matters, determine the suitability of the site for the proposed facility.

Among the provisions pertaining to the determination of site suitability, issues associated with the common defense and security are, as a general matter, addressed through the requirements of 10 C.F.R. §100.21(f). This provision requires applicants to demonstrate that the site characteristics of the proposed location are such "that adequate security plans and measures can be developed." In conducting its technical review of this portion of the application, the NRC addresses potential vulnerabilities of the location of the proposed facility to terrorist attack; this evaluation focuses on assessing the impact of the following factors: (1) pedestrian and vehicular land approaches, (2) railroad approaches, (3) waterborne approaches, (4) potential "high-ground" adversary advantage areas, (5) nearby road and/or transportation routes, and (6) nearby hazardous materials facilities, airports, dams, military and chemical facilities, and pipelines.

Commencing in FY07, a substantial number of applications for new nuclear power plants is expected.

Department of Homeland Security

The Department of Homeland Security (DHS), pursuant to the Homeland Security Act (HSA) of 2002, Pub. L. 107-296, 116 Stat. 2135; Homeland Security Presidential Directive 7 (HSPD-7); and the National Infrastructure Protection Plan (NIPP) of 2006, has the authority and responsibility to lead the unified national effort to secure America by preventing, deterring, and responding to terrorist attacks and other threats and hazards to the Nation, including protecting the Nation's critical infrastructure (CI) and key resources (KR), such as the subject "utilization facilities."

III. Consultation Roles and Responsibilities

The NRC will "consult" with the DHS under Section 657 of the EPA as follows:

Before issuing a license for a utilization facility, the NRC will request, and the DHS will review and provide to the NRC comment on the potential vulnerabilities of the location of the proposed facility to terrorist attack. This review and comment will be based on information, including the application, provided by the NRC, and any other factors, consistent with DHS authorities, the DHS considers vital to assessing the potential vulnerabilities of the location of the proposed facility to terrorist attack.

Within ten (10) days after acceptance and docketing of an application, the NRC will provide the DHS with the application and any other information it deems relevant. The NRC will communicate promptly any schedule delay.

Within 90 days of receipt of the application materials, the DHS will respond to the NRC in writing. This response will include any and all DHS comments concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack. If within 60 days of receipt of the application materials the DHS anticipates that it cannot complete its review within the 90-day time frame, the DHS will contact the NRC to discuss a mutually agreeable date by which it will respond to the NRC's request for consultation.

The NRC and the DHS recognize that certain portions of the information exchanged pursuant to this Memorandum of Understanding may be Safeguards Information in accordance with section 147 of the Atomic Energy Act of 1954, as amended; classified information; or other sensitive information that must be properly identified and protected from public disclosure in accordance with applicable requirements.

IV. Working Arrangements

The NRC Point of Contact for this agreement is: Team Leader, New Reactor Security Team, Reactor Security Branch, NSIR.

The DHS Point of Contact for this agreement is:
Lead, Nuclear Sector Branch, CNPPD

V. Funding

All activities pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.

VI. Memorandum of Understanding

This MOU shall not be construed to provide a private right of action for or by any person or entity.

This MOU is effective upon signature by both parties. It will remain in effect until terminated by one of the parties following 30 days advance written notice to the other party.

Modifications to this MOU may be made by written agreement of both parties.

Approved for the U.S. Nuclear Regulatory Commission

Dated: December 8, 2006

/RA/

Luis A. Reyes
Executive Director for Operations

Approved for the Department of Homeland Security

Dated:

Robert B. Stephan
Assistant Secretary for Infrastructure Protection

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE DEPARTMENT OF HOMELAND SECURITY/FEDERAL
EMERGENCY MANAGEMENT AGENCY
AND NUCLEAR REGULATORY COMMISSION
REGARDING RADIOLOGICAL EMERGENCY RESPONSE, PLANNING, AND
PREPAREDNESS**

I. PARTIES. The parties to this Agreement are the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) and the Nuclear Regulatory Commission (NRC).

A. DHS/FEMA

1. **PRIMARY MISSION.** The primary mission of DHS/FEMA is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.
2. **SPECIFIC ACTIVITIES.** In support of the primary mission of DHS/FEMA, the Technological Hazards Division (THD):
 - a. Ensures that state, local, and tribal governments can adequately protect the health and safety of the public living in the vicinity of the utilization facilities, as defined by Public Law 96-295, in the event of an incident at a utilization facilities;
 - b. Informs and educates the public about radiological emergency preparedness; and
 - c. Supports and provides guidance to state, local, and tribal governments' emergency planning and preparedness activities that take place "offsite", or beyond the boundaries of the owner-controlled area around a utilization facility.

B. NRC

1. **PRIMARY MISSION.** The primary mission of the NRC is to license and regulate the Nation's civilian use of radioactive materials to protect public health and safety; promote the common defense and security; and protect the environment. NRC's regulatory mission covers three main areas:
 - a. **Reactors** – Commercial reactors for generating electric power and research and test reactors used for research, testing, and training.
 - b. **Materials** – Uses of nuclear materials in medical, industrial, and academic settings and facilities that produce nuclear fuel.
 - c. **Waste** – Transportation, storage, and disposal of nuclear materials and waste, and decommissioning of nuclear facilities from service.

2. SPECIFIC ACTIVITIES. In support of the primary mission of the NRC, the Division of Preparedness and Response (DPR):

- a. Performs emergency preparedness licensing casework for Operating Reactors, Fuel Cycle, Independent Spent Fuel Storage Installations (ISFSI), and New Reactors;
- b. Conducts analysis and evaluations of emergency preparedness decommissioning requests;
- c. Initiates emergency preparedness rulemaking upon the Commission's direction; and
- d. Oversees the agency exercise program, responder qualifications, and readiness of the NRC Operations Center.

II. AUTHORITY. This Agreement is authorized under the provisions of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; NRC Authorization Act of 1980 (Public Law 96-295), § 109; Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. § 5131(a) and (b); 6 U.S.C. § 744; Executive Order 12127, as amended; Executive Order 12148, as amended; Executive Order 12657, as amended; Presidential Policy Directive-8 (PPD-8): National Preparedness.

III. PURPOSE. The purpose of this Agreement is to establish a framework of cooperation between the FEMA and NRC in radiological emergency response planning and preparedness matters so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of utilization facilities, as defined in Public Law 96-295.

FEMA coordinates all Federal planning for offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews FEMA's findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by the NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed utilization facility to include taking enforcement actions such as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC in preparedness matters.

IV. SUPERSEDES. This Agreement supersedes (1) the Memorandum of Understanding (MOU) between FEMA and NRC dated September 7, 1993 (58 FR 47997, September 14, 1993), and published as Appendix A to 44 CFR part 353; (2) the MOU between FEMA and NRC relating to cooperation and responsibilities in response to an actual or potential radiological emergency entered into on October 22, 1980 (45 FR 82715, December 15,

1980); and (3) the MOU between FEMA and NRC relating to Executive Order 12657 concluded on December 1, 1991.

V. RESPONSIBILITIES.

A. DHS/FEMA Responsibilities

1. To take the Federal lead role in offsite emergency planning and preparedness activities and to review and assess offsite emergency plans and preparedness for adequacy.
2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
Notwithstanding the regulations which are set forth in 44 CFR Part 350 for requesting and reaching FEMA approval of state, local, and tribal plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or upon specific NRC request. The request and findings will constitute written communications between the co-chairs of the FEMA/NRC Steering Committee. Any finding provided under this arrangement will constitute an extension of FEMA's review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR Part 350. Findings will be based on the review of currently available plans and joint exercise results related to a specific utilization facility, as defined by Public Law 96-295.

- a. Exercise evaluations will identify one of the following conditions: (1) there is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are inadequacies that must be corrected; or (3) a finding of reasonable assurance cannot be determined and FEMA will provide a schedule of actions leading to a decision.
- b. A Level 1 finding is defined as an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a utilization facility. Because of the potential impact of Level 1 findings on emergency preparedness, they should be corrected within 120 days through appropriate remedial actions, including remedial exercises, drills, or other actions.

When there are Level 1 findings of the types noted above, and there is potential for remedial actions, FEMA Headquarters will promptly (1-2 days) discuss these with NRC Headquarters. Within 10 days of the exercise, official notification of the identified Level 1 finding will be made by FEMA to the State, NRC Headquarters, and the FEMA Regional Assistance Committee (RAC) with an information copy to the licensee. NRC will formally notify the licensee of the Level 1 finding and monitor the licensee's efforts to work with

State and local authorities to correct the identified inadequacy. Approximately 60 days after official notification of the Level 1 finding, the NRC, in consultation with FEMA, will assess the progress being made towards resolution.

3. If FEMA determines under 44 CFR § 350.13 that offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of radiological emergency to protect the health and safety of the public, FEMA shall withdraw approval.
4. To lead the development of radiological preparedness focused information and education programs.
5. To review applications under 10 CFR Part 52 for an early site permit, FEMA will receive pertinent information provided by the applicant, and forwarded by NRC, and determine whether there is any significant impediment to the development of offsite emergency plans. As appropriate, depending upon the nature of information provided by the applicant, the NRC may also request that FEMA determine whether major features of offsite emergency plans submitted by the applicant are acceptable, or whether offsite emergency plans submitted by the applicant are adequate, as discussed below.

- a. A finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the planning standards (44 CFR 350.5) and evaluation criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment); or (3) plans are inadequate and cannot be implemented until they are revised to correct inadequacies noted in the Federal review.
- b. If, in FEMA's view, the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in development and review of the plans.
- c. A finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the planning standards (44 CFR 350.5) and criteria of NUREG-0654/FEMA-REP-1, and (2) whether an exercise(s) demonstrates that there is reasonable assurance that the plans can be implemented.

6. To assume responsibility, as a supplement to state, local, tribal, and utility efforts, for radiological emergency preparedness training of state, local, and tribal officials.
7. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities for coordination and direction for radiological emergency planning and preparedness activities for radiological incidents at fixed nuclear facilities and transportation incidents involving radioactive materials. [Current assignments are in 44 CFR Part 351, March 11, 1982. (47 FR 10758)]
8. To inform the NRC if a disaster significantly damages the area around a licensed operating utilization facility and FEMA seriously questions the continued adequacy of offsite emergency preparedness. FEMA will also take the following actions:
 - a. Perform a Preliminary Capabilities Assessment (PCA) to obtain an assessment of offsite emergency preparedness capabilities immediately following an event and assist FEMA in making a determination on the need and timing for a full disaster-initiated review (DIR) of offsite radiological emergency preparedness. Communication and coordination between FEMA and NRC during the PCA phase should be maintained primarily at the Regional level between the appropriate FEMA RAC Chair and NRC Regional State Liaison Officer (RSLO). The respective Regions will be responsible during the PCA phase for updating respective HQ staff on status.
 - b. If determined that a DIR of offsite radiological emergency preparedness capabilities of the affected offsite jurisdiction(s) is necessary, the NRC will be informed in writing, as soon as practicable, including a schedule for conduct of the review. FEMA will also give the NRC (1) interim written reports of its findings, as appropriate, and (2) a final written report on the results of its review. A DIR is not intended to be a comprehensive review of offsite plans and preparedness.
9. To support NRC licensing reviews related to utilization facilities, with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include submittal of an evaluation suitable for inclusion in NRC safety evaluation reports. Routine support will include providing assessments, findings, and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, and any court actions, including any related proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. In accordance with the NRC's regulations and the discretion of the NRC licensing board, FEMA counsel will normally present FEMA witnesses and be permitted to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned,

resolution of any differences will be made by the Chief Counsel of FEMA and the General Counsel of the NRC or their designees. NRC will request the presiding officer to place FEMA on the service list for all litigation in which it is expected to participate.

10. To notify the NRC upon receiving a licensee's request for Federal facilities and resources when a decline or fail situation exists (44 CFR 352.4). FEMA will consult with affected Federal agencies to determine the need for and commitment of Federal facilities and resources, consistent with Executive Order 12657, as amended. During this consultation process, FEMA will cooperate with affected agencies, including the NRC, to review the needs of the licensee, the Federal resources available, the conditions under which any assistance would be provided, and the options for obtaining reimbursement.

11. To coordinate the discontinuation of FEMA REP Program Services when the NRC determines, through an approved exemption from 10 CFR 50.47 and appendix E to Part 50 requirements or through other regulatory processes, that FEMA REP Program Services affecting offsite radiological emergency planning and preparedness are no longer required at a particular utilization facility. FEMA requires notification of the effective date from NRC to close out REP Program services. FEMA will make necessary notifications to state, local, and tribal entities.

B. NRC Responsibilities

1. To assess licensee emergency plans for adequacy. This review will include organizations with which licensees have written agreements to provide onsite support services under emergency conditions.
2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. To review FEMA's findings and determinations as to whether offsite plans are adequate and can be implemented.
4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite determined by FEMA and reviewed by NRC) such as the issuance of operating licenses and the regulation of the operation of licensed utilization facilities, as defined by Public Law 96-295, to include taking enforcement actions, such as issuing notices of violations, civil penalties, and orders, including the shutdowns of operating reactors.
5. To identify those utilization facilities, as defined in Public Law 96-295, and transmit a request for review to FEMA as the emergency plans are completed.
6. To review FEMA's findings and determinations upon receiving notification of FEMA's withdrawal of reasonable assurance, and formally document the NRC's position. When, as described, in 10 CFR §§ 50.54(s)(2)(ii) and 50.54(s)(3), the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological

emergency, the NRC will notify the affected licensee accordingly and start the "120-day clock."¹

7. To assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an incident involving radioactive materials associated with utilization facilities as defined in Public Law 96-295.
8. To inform FEMA of any information it received from licensees, its inspectors, or others, that raises serious questions about continued adequacy of offsite emergency preparedness.
9. To consider information provided by FEMA Headquarters and pertinent findings from FEMA's PCA and/or DIR in making decisions regarding the restart or continued operation of an affected operating nuclear power reactor. The NRC will notify FEMA Headquarters, in writing, of the schedule for restart of an affected reactor and keep FEMA Headquarters informed of any changes in that schedule.
10. To provide only advice to the licensee on assistance and resources, when a decline or fail situation (as defined in EO 12657, as amended) exists.
11. To coordinate the discontinuation of FEMA REP Program Services, NRC will make the following notifications to FEMA, as the information becomes available, regarding:
 - a. Which utilization facility will be undergoing decommissioning/closure;
 - b. The decommissioning schedule to include the proposed dates for when FEMA REP Program Services are no longer needed; and
 - c. The NRC-approved effective date that FEMA REP Program services are no longer needed.

C. Both DHS/FEMA and NRC will:

1. Conduct joint exercises. These joint exercises will include cooperation and coordination between the agencies for the following:
 - a. Determining exercise requirements for licensees, and state, local, and tribal governments. To the extent practicable, both agencies will observe and evaluate exercises through implementation of the National Preparedness System, regulations, and programmatic guidance.
 - b. Assuring that both onsite and offsite considerations are adequately addressed and integrated in a manner that provides a technically sound exercise upon which an assessment of preparedness capabilities can be based.
2. Provide opportunity for the other agency to review and comment on guidance, including interpretations of agreed-upon joint guidance, and relevant research and

¹ Per 10 CFR § 50.54(s)(2)(ii), the Commission will determine whether the reactor shall be shut down or other enforcement action is appropriate if such conditions are not corrected within four months. The NRC is not limited by this provision of the rule, for, as stated in 10 CFR § 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph".

development programs prior to adoption as formal agency guidance and/or implementation.

3. Participate in the FEMA/NRC Steering Committee on Emergency Preparedness. The Steering Committee will continue to be the focal point for coordination of emergency planning and preparedness and will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to FEMA and NRC management. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out. Any follow-up reports or documentation of actions will be coordinated through the Steering Committee. Details of this arrangement are articulated in the FEMA/NRC Steering Committee Charter.
4. Will maintain close communication between their respective Offices of Public Affairs/External Affairs, as much as practical, to maintain situational awareness of the external communication efforts of the other. Upon request, and when possible, FEMA will supply additional public affairs staff to augment the NRC's crisis communication response.
5. Adhere to the preparedness, response, and recovery roles and responsibilities set forth in the National Preparedness System (NPS), National Planning Frameworks, and the Nuclear/Radiological Incident Annex (NRIA) to the National Response and Recovery Federal Interagency Operational Plans (FIOPs).

VI. POINTS OF CONTACT

A. DHS/FEMA

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National Preparedness Directorate
Federal Emergency Management Agency
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B. NRC

Robert Lewis, Director
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Office of Nuclear Security and Incident Response
Nuclear Regulatory Commission
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301 287-3779 (office)
11545 Rockville Pike
Rockville, MD 20852

VII. OTHER PROVISIONS.

- A. Nothing in this Agreement is intended to conflict with current law or regulations or the directives of DHS/FEMA or NRC. If a term of this Agreement is inconsistent with any such authority, and/or thereby deemed invalid, the remaining terms of this Agreement shall remain in full force and effect.
- B. Nothing in this Agreement is intended to restrict the authority of either party to act as provided by statute or regulation.
- C. Any information shared under this Agreement will comply with the Privacy Act, and to the extent required and allowable, the Freedom of Information Act (FOIA), and any other applicable statute, Executive Order, or regulation.
- D. This Agreement is between DHS/FEMA and NRC and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any third person or party (public or private) against the United States, its agencies, its officers, or any person; or against NRC, their officers or employees or any other person.
- E. The parties will use or display each other's name, emblem, or trademarks only in the case of particular projects and only with the prior written consent of the other party. The DHS seal is protected by 18 U.S.C. §§ 506, 701, and 1017, among other laws, and use of the seal is controlled by the DHS Office of Public Affairs through DHS Management Directive No. 0030 (MD 0030).
- F. This Agreement, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this Agreement.
- G. This Agreement is not a fiscal or funds obligation document. Any funds, services or equipment provided to accomplish the goals anticipated under this agreement are done so without expectation of reimbursement or the payment of fees related to the provision of such services, equipment or personnel unless otherwise agreed. Any specific work or activity that involves the transfer of funds, services, or property among the parties will require execution of a separate agreement, and will be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory or other authority. This Agreement does not provide such authority.


VIII. EFFECTIVE DATE. The terms of this agreement will become effective upon the signature of both parties.

IX. MODIFICATION. This agreement may be modified upon the mutual, written consent of the parties.

X. TERMINATION. The terms of this agreement, as modified with the consent of both parties, will remain in effect until terminated by both or either parties. The agreement may be extended by mutual written agreement of the parties. Either party upon 60 days written notice to the other party may terminate this agreement.

- X. **TERMINATION.** The terms of this agreement, as modified with the consent of both parties, will remain in effect until terminated by both or either parties. The agreement may be extended by mutual written agreement of the parties. Either party upon 60 days written notice to the other party may terminate this agreement.

XI. **APPROVED BY**


W. Craig Fugate, Administrator, FEMA

12/7/15
[insert signature date]


Victor M. McCree, Executive Director for Operations of the NRC

11/19/15
[insert signature date]

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
U.S. DEPARTMENT OF HOMELAND SECURITY AND THE
U.S. NUCLEAR REGULATORY COMMISSION**

1. PARTIES

The parties to this memorandum of understanding (MOU) are the U.S. Department of Homeland Security (DHS) and the U.S. Nuclear Regulatory Commission (NRC).

2. PURPOSE

The purpose of this MOU is to delineate clear lines of responsibility between the parties, based on their legal authorities, for the security of high-risk chemical facilities subject to DHS regulations and for the security of chemicals at facilities subject to the NRC regulations. The parties intend this MOU to describe their relationship for the purpose of identifying those facilities that are subject to the NRC regulations and are thus exempt, in whole or in part, from the chemical facility security regulations issued by DHS. To this end, the parties will cooperate in accordance with the principles and procedures in this MOU.

3. BACKGROUND

a. Congress conferred upon DHS the authority to regulate the security of high-risk chemical facilities and required DHS to develop risk-based performance standards for security at high-risk chemical facilities. DHS published such standards as an interim final rule (Volume 72 of the *Federal Register*, page 17688 (72 FR 17688)) on April 9, 2007. (See Title 6 of the *Code of Federal Regulations* (6 CFR) Part 27, "Chemical Facility Anti-Terrorism Standards [CFATS])."

b. Congress has exempted certain facilities, including facilities subject to the NRC regulations, from DHS regulations. Those exemptions are reflected in 6 CFR 27.110(b) of the CFATS rule and discussed in 72 FR 17699.

c. The NRC has the authority to regulate facilities consisting of structures or containing materials or activities that are covered by the Atomic Energy Act of 1954 (42 U.S.C. 2167) and to ensure that such facilities implement appropriate security measures.

4. DEFINITIONS

The following definitions apply to this MOU and any amendments:

a. The terms "consult" and "consultation," mean that each of the parties to this MOU will ask for the advice or opinion of the other party on issues pertaining to the implementation of this MOU and will confer with the other party for the purpose of arriving at agreement on such issues. The parties will exchange views promptly on issues that arise on matters addressed by the MOU.

b. The term, "facility subject to regulation by the NRC," means a facility or site, or an area within a facility or site, (1) for which the NRC or an Agreement State imposes significant security requirements that protect an NRC-licensed or Agreement-State-licensed material,

activity, or structure from unauthorized access and (2) at which the licensee has implemented security requirements.

c. The term, "NRC-licensed material," means source material, special nuclear material, or byproduct material as defined in Section 11 of the Atomic Energy Act of 1954.

d. The term, "Agreement State(s)," means a State that has entered into an agreement with the NRC under Section 274b of the Atomic Energy Act of 1954.

e. The term, "chemical facility," has the meaning prescribed in 6 CFR 27.105, "Definitions."

f. The term, "NRC exemption," refers to the exemption described in section 550(a) of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 110-295, and in 6 CFR 27.110(b).

5. PRINCIPLES AND PROCEDURES

The parties agree to the following principles and procedures:

a. Overall Security Responsibility. DHS is responsible for regulating security at high-risk chemical facilities under the CFATS rule. Facilities, or portions of facilities, that are subject to NRC regulations are exempt from the CFATS rule if they are identified within, or fall within, the categories identified in Section 6(a) or Section 6(b) of this MOU. DHS and the NRC acknowledge that a facility that is subject to NRC regulations could contain areas that are not subject to NRC regulations and that such areas, as determined by the parties under Section 6(b) of this MOU, may be subject to DHS regulations under CFATS. An example of such a situation might be the campus of a large institution, such as a university, which contains a structure that houses a research and test reactor subject to NRC regulations.

b. Clarification of Exemption. DHS and the NRC agree that the exemption provided by the CFATS rule for facilities subject to NRC regulations applies to a facility for which the NRC or an Agreement State imposes significant security requirements and regulates the safety and security of most of the facility. The NRC exemption does not apply to facilities at which the claim for exemption is based on NRC-licensed material that consists only of a number of small radioactive sources or to portions of facilities not subject to NRC security requirements. For example, a facility at which NRC-licensed material only consists of a small number of radioactive sources for chemical process control equipment, gauges, or dials will not be considered exempt. (See 72 FR 17699.)

c. Identification of Exempt Facilities. Within 60 days after the MOU is signed, the NRC will, to the extent possible, identify all facilities by category, licensee name, facility name (if any), and address that are subject to NRC regulations and that the NRC believes are exempt from the CFATS rule. For all such facilities, the NRC will inform DHS if it believes the entire facility or an area within the facility should be exempted from CFATS. For any facility for which the NRC believes that only an area within the facility should be exempted from CFATS, the NRC will provide DHS with sufficient information to identify any area within the facility that should not be subject to the exemption from the CFATS rule. DHS and the NRC will work together to make a final determination on whether a facility or an area within a facility is subject

to NRC regulation and is thus exempt from DHS regulation. If the DHS and the NRC staffs cannot reach agreement on a final determination, the Deputy Secretary of DHS and the Executive Director for Operations of the NRC will resolve the matter.

d. Exempt Facility Notifications. Once DHS and the NRC agree on a final determination regarding a facility's exempt status, DHS will notify the facility of the final determination and provide a copy of the notification to the NRC. If a facility's status under NRC regulations changes in a manner that warrants reconsideration of the final determination on its CFATS exempt status, the NRC will inform DHS in a timely manner of any such changes, and DHS and the NRC will reevaluate the facility's exempt status under the process described in Section 5(c) of this MOU. This reevaluation applies both to facilities that have been determined to be wholly or partially exempt from CFATS and to facilities that have not been declared wholly or partially exempt from CFATS.

e. Sensitive but Unclassified Information. The parties will take appropriate actions to protect Chemical-terrorism Vulnerability Information, as prescribed in 6 CFR 27.400, and Safeguards Information, as prescribed in Section 147 of the Atomic Energy Act of 1954 and its implementing regulations in 10 CFR Part 73, "Physical Protection of Plants and Materials," or directives in NRC implementing orders.

f. Classified Information. The parties will take appropriate action to protect classified information as prescribed in Executive Order 13526, "Classified National Security Information" (75 FR 707, January 5, 2010).

6. EXEMPT STATUS OF CERTAIN FACILITIES SUBJECT TO NRC REGULATION

Under the process described in Section 5(c) of this MOU, DHS and the NRC will jointly determine which facilities, or areas within a facility, are exempt from CFATS regulations. If a facility is licensed by an Agreement State, the NRC will consult with the Agreement State when a determination of exemption of such a facility is considered under this MOU. Facilities regulated by the NRC in accordance with its regulatory responsibility for chemical security will be assigned to one of the following categories:

a. Facilities Subject to NRC Security Regulations. Because of the extensive nature of the NRC security requirements applicable to the facilities and categories of facilities listed below, DHS and the NRC agree that the NRC will be responsible for security, including the security of all chemicals of interest, at those facilities, and DHS will have no responsibility for such facilities under the CFATS rule. These facilities include the following:

- power reactors (licensed under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," or 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants")
- Category I, II, or III facilities (licensed under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material")
- gaseous diffusion enrichment plants (operating under certificates issued under 10 CFR Part 76, "Certification of Gaseous Diffusion Plants")

- enrichment facilities (licensed under 10 CFR Part 70)
- the Honeywell uranium conversion facility (licensed under 10 CFR Part 40, "Domestic Licensing of Source Material")
- the International Isotopes Uranium Deconversion Facility, if licensed

b. Facilities That May be Subject to Both NRC and DHS Security Regulations. At a number of facilities subject to NRC regulation, the NRC security requirements are not applicable or are not required to be implemented in all areas of the facility. The areas of such facilities subject to NRC security regulations shall be exempt from the CFATS rule. The areas of the facility subject to NRC security requirements are those areas in which the licensee has implemented additional security measures (and hence have significant security requirements), as described in Section 5(b) of this MOU, in response to orders or regulations issued by the NRC and are therefore exempt from CFATS regulations. DHS and the NRC agree that an area of such a facility in which NRC security requirements are not imposed and implemented, as determined on a case-by-case basis by DHS in consultation with the NRC, may be subject to DHS security regulations under the CFATS rule if DHS determines that such areas present high levels of chemical security risk. In such circumstances, the NRC will consult with the relevant Agreement State, as appropriate, to help inform the final determination, made by DHS in consultation with the NRC, on which areas are subject to NRC regulations and are therefore exempt from CFATS regulation. These facilities may include the following:

- research and test reactors and nonpower reactors (licensed under 10 CFR Part 50)
- manufacturers and distributors (licensed under 10 CFR Part 32, "Specific Domestic Licenses To Manufacture or Transfer Certain Items Containing Byproduct Material") and possessors of large irradiators (licensed under 10 CFR Part 36, "Licenses and Radiation Safety Requirements for Irradiators") that are subject to additional security measures imposed under common defense and security as specified in the Atomic Energy Act of 1954, if those measures have been implemented
- radioactive materials licensees (licensed under 10 CFR Part 33, "Specific Domestic Licenses of Broad Scope for Byproduct Material"; 10 CFR Part 34, "Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations"; 10 CFR Part 35, "Medical Use of Byproduct Material"; and 10 CFR Part 36) that have been issued increased control orders or license conditions to enhance security and that have implemented the enhanced security measures

7. OTHER PROVISIONS

a. Facility Implementing Agreements. After this MOU becomes effective, DHS and the NRC may jointly establish implementing agreements specific to the responsibilities and authorities of their respective agencies at any facility subject to both DHS and NRC regulation, as well as information-sharing protocols, or similar agreements with respect to such a facility.

b. Severability. Nothing in this MOU or any amendment thereto is intended to conflict with current law, regulations, DHS Secretarial and the NRC orders, or DHS Secretarial directives. If any provision of this MOU or any amendment thereto is inconsistent with such authorities, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU and any amendment thereto will remain in full force and effect. In the event that either party to this MOU believes that such an apparent inconsistency exists, that party will promptly notify the other party and provide a reasonable opportunity to the other party to consult on which portions of this MOU may be invalid before the party that believes that the inconsistency exists makes a final decision.

c. Rights and Benefits. No part of this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions. Furthermore, no part of this agreement is intended to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States, its agencies or officers, or State agencies or officers carrying out programs authorized under Federal law or against any other person.

d. Amendment and Modification. This MOU and any amendments hereto may be amended or revised at any time by written agreement of the parties or by their authorized signatories. Both parties will use their best efforts to reach agreement on any amendment within 90 days of the date on which either party gives written notice to the other party of the proposed amendment.

e. Period of Agreement/Termination. This MOU will be effective as of the date of the final signatures of both parties and will remain in effect until (1) either party terminates it or (2) the DHS authority over security at high-risk chemical facilities terminates. Termination of this MOU by a party requires a written notice to the other party within 90 days.

f. Nonfund Obligating Document. No part of this MOU shall obligate either DHS or the NRC to obligate or transfer funds.

THE PARTIES HERETO have executed this instrument:

Martin J. Virgilio
Deputy Executive Director for Reactor
and Preparedness Programs
Office of the Executive Director for Operations
U.S. Nuclear Regulatory Commission

Rand Beers
Under Secretary
National Protection and Programs
Directorate
U.S. Department of Homeland Security

b. Severability. Nothing in this MOU or any amendment thereto is intended to conflict with current law, regulations, DHS Secretarial and the NRC orders, or DHS Secretarial directives. If any provision of this MOU or any amendment thereto is inconsistent with such authorities, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU and any amendment thereto will remain in full force and effect. In the event that either party to this MOU believes that such an apparent inconsistency exists, that party will promptly notify the other party and provide a reasonable opportunity to the other party to consult on which portions of this MOU may be invalid before the party that believes that the inconsistency exists makes a final decision.

c. Rights and Benefits. No part of this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory, or other official functions. Furthermore, no part of this agreement is intended to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States, its agencies or officers, or State agencies or officers carrying out programs authorized under Federal law or against any other person.

d. Amendment and Modification. This MOU and any amendments hereto may be amended or revised at any time by written agreement of the parties or by their authorized signatories. Both parties will use their best efforts to reach agreement on any amendment within 90 days of the date on which either party gives written notice to the other party of the proposed amendment.

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Martin J. Virgilio
Deputy Executive Director for Reactor
and Preparedness Programs
Office of the Executive Director for Operations
U.S. Nuclear Regulatory Commission

Rand Beers
Under Secretary
National Protection and Programs
Directorate
U.S. Department of Homeland Security

ADAMS Accession No.: ML102720798 Package: ML102740217

OFFICE	NSIR/FCTSB	NSIR/DSP	BC: NSIR/FCTSB	NSIR/DDMS	NSIR/DSP
NAME	RRagland	JRivers	RCaldwell	MLayton	RCorreia/RA for M. Layton/
DATE	11/10/10	11/10/10	11/16/10	11/22/10	12/3/10

OFFICE	FSME	NMSS	NRR	OGC	NSIR
NAME	CMiller	Chaney /RA D.H.Dorman for/	ELeeds/RA B. Boger for/	SBurns /RA T. Rothschild for/NLO	JViggins
DATE	12/30/10	12/27/10	12/22/10	12/27/10	12/14/10

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**DEPARTMENT OF HOMELAND SECURITY
INFRASTRUCTURE PROTECTION
RECORD OF COORDINATION AND APPROVAL**

CONTROL NUMBER
(IF APPLICABLE)

PK1616

SUBJECT

Nuclear Regulatory Commission (NRC) -- Department of Homeland Security Memorandum of Understanding (MOU) Addendum for Assistant Secretary Keil's signature.

PERSON TO CONTACT ON ATTACHED

NAME/OFFICE
Abigail Greene

TELEPHONE
703-235-9376

EXPLANATION

The enclosed MOU was reviewed and approved by IP Leadership and OGC on June 6, 2011. Following that approval, the MOU was sent to the NRC for the Executive Director of Operations' signature. To finalize the MOU, the documents require Assistant Secretary Keil's signature. Enclosed are two copies of the MOU for signature. One signed copy will be provided to the NRC for their records and the second signed copy is for our records.

Office of General Counsel

☒ Concur ☐ Non-Concur ☐ Not Applicable

Ahr

(Reviewed prior to submission through OAS)

Attorney

RELEASED FOR COORDINATION

TITLE	SIGNATURE	DATE	DEADLINE DATE FOR COORDINATION
Linda Solheim Director Protective Security Coordination Division	<i>[Signature]</i>	11/21/11	28 November 2011

OFFICE	SIGNATURE	DATE	CONCUR		NON CONCUR	COMMENT RESOLUTION
			NO COMMENT	COMMENT		
Todd M. Keil Assistant Secretary	<i>[Signature]</i>	11/12				
William F. Flynn Deputy Assistant Secretary	<i>[Signature]</i>	11/11				
Michael Beland Chief of Staff	<i>[Signature]</i>	11/28/11				
Richard LePage Director of Management	<i>[Signature]</i>	11/22/11	X			

AFTER REVIEW PLEASE RETURN TO: Abigail Greene	TELEPHONE 703-235-9376
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PSCD is responsible for the execution of this MOU. Have they reviewed & approve of revisions?
PSCD Clears. - John D.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. NUCLEAR REGULATORY COMMISSION
AND
THE DEPARTMENT OF HOMELAND SECURITY
REGARDING
CONSULTATION CONCERNING POTENTIAL VULNERABILITIES
OF THE LOCATION OF PROPOSED NEW UTILIZATION FACILITIES
REVISION 1**

I. Purpose

This Memorandum of Understanding (MOU) establishes a process to implement the provisions of Section 657 of the Energy Policy Act of 2005 (EPA), Pub. L. 109-58, 119 Stat. 594, 814 (2005). Section 657 states:

SEC. 657. DEPARTMENT OF HOMELAND SECURITY CONSULTATION.

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

II. Background

Nuclear Regulatory Commission

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, the U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing and regulating the construction and operation of commercial nuclear power plants (known as "utilization facilities") in the United States to protect the health and safety of the public and to promote the common defense and security. In conducting its review of applications for such facilities pursuant to the Commission's implementing regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 50 and 52, the NRC must, among other matters, determine the suitability of the site for the proposed facility.

Among the provisions pertaining to the determination of site suitability, issues associated with the common defense and security are, as a general matter, addressed through the requirements of 10 CFR 100.21(f). This provision requires applicants to demonstrate that the site characteristics of the proposed location are such "that adequate security plans and measures can be developed." In conducting its technical review of this portion of the application, the NRC addresses potential vulnerabilities of the location of the proposed facility to terrorist attack; this evaluation focuses on assessing the impact of the following factors: (1) pedestrian and vehicular land approaches, (2) railroad approaches, (3) waterborne approaches, (4) potential "high-ground" adversary advantage areas, (5) nearby road and/or transportation routes, and (6) nearby hazardous materials facilities, airports, dams, military and chemical facilities, and pipelines.

Enclosure

Department of Homeland Security

The Department of Homeland Security (DHS), pursuant to the Homeland Security Act (HSA) of 2002, Pub. L. 107-296, 116 Stat. 2135, Homeland Security Presidential Directive 7 (HSPD-7), and the National Infrastructure Protection Plan of 2006, has the authority and responsibility to lead the unified national effort to secure America by preventing, deterring, and responding to terrorist attacks and other threats and hazards to the Nation, including protecting the Nation's critical infrastructure and key resources, such as the subject "utilization facilities."

III. Consultation Roles and Responsibilities

The NRC will "consult" with the DHS under Section 657 of the EPA as follows:

Before issuing a license for a utilization facility, the NRC will request, and the DHS will review and provide to the NRC comment on the potential vulnerabilities of the location of the proposed facility to terrorist attack. This review and comment will be based on information, including the application, provided by the NRC, and any other factors, consistent with DHS authorities, the DHS considers vital to assessing the potential vulnerabilities of the location of the proposed facility to terrorist attack.

Within 30 days after acceptance and docketing of an application, the NRC will provide the DHS with the application and any other information it deems relevant. The NRC will communicate promptly any schedule delay.

Within 180 days of receipt of the application materials, the DHS will respond to the NRC in writing. This response will include any and all DHS comments concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack. If within 150 days of receipt of the application materials the DHS anticipates that it cannot complete its review within the 180-day time frame, the DHS will contact the NRC to discuss a mutually agreeable date by which it will respond to the NRC's request for consultation.

The NRC and the DHS recognize that certain portions of the information exchanged pursuant to this MOU may be Safeguards Information in accordance with Section 147 of the Atomic Energy Act of 1954, as amended, classified information, or other sensitive information that must be properly identified and protected from public disclosure in accordance with applicable requirements.

IV. Working Arrangements

The NRC Point of Contact for this agreement is:
Branch Chief, Reactor Security Licensing Branch, Office of Nuclear Security and Incident Response

The DHS Point of Contact for this agreement is:
Chief, Nuclear Sector Specific Agency and Chief, Office of Infrastructure Protection, Vulnerability Assessment Branch

V. Funding

All activities pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.

VI. Memorandum of Understanding

This MOU shall not be construed to provide a private right of action for or by any person or entity.

This MOU is effective upon signature by both parties. It will remain in effect until terminated by one of the parties following 30 days advance written notice to the other party.

Modifications to this MOU may be made by written agreement of both parties.

Approved for the U.S. Nuclear Regulatory Commission

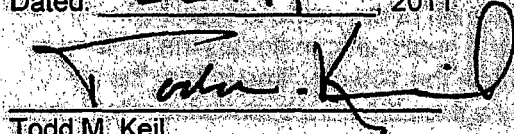
Dated: Oct 12, 2011



R. W. Borchardt
Executive Director for Operations

Approved for the Department of Homeland Security

Dated: Dec. 19, 2011



Todd M. Keil
Assistant Secretary for Infrastructure Protection

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THE U.S. NUCLEAR REGULATORY COMMISSION
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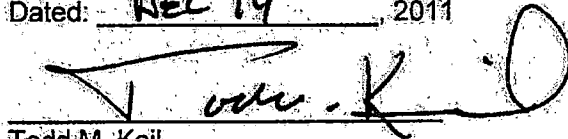
Dated: Oct 12, 2011



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Approved for the Department of Homeland Security

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Todd M. Keil
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