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POLICY ISSUE (Notation Vote)

December 20, 1996

SECY-96-261

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF ENERGY AND
THE NUCLEAR REGULATORY COMMISSION FOR COOPERATION IN SUPPORT OF
SIGNIFICANT PROJECTS AND ACTIVITIES

PURPOSE:

To transmit the attached Memorandum of Understanding (MOU) between the Department of Energy (DOE) and the Nuclear Regulatory Commission to the Commission for review and approval.

DISCUSSION:

The staff has prepared for the Chairman's signature the attached MOU between DOE and NRC. This MOU, which is the result of a cooperative effort between DOE and NRC technical staffs, establishes the basic framework for carrying out significant projects and activities where joint cooperation between DOE and NRC is desirable.

Examples of such projects and activities can be found in an attachment to the April 18, 1996, letter from Raymond P. Berube, DOE, Deputy Assistant Secretary for Environment, to Dr. Carl J. Paperiello, NRC, Director of the Office of Nuclear Material Safety and Safeguards.

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NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE AVAILABLE

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This MOU supplements the MOU between DOE and NRC dated February 24, 1978. Within the framework of this broad, umbrella MOU, NRC and DOE staff anticipate that specific MOUs will be developed to guide the DOE/NRC interactions on facility/activity specific matters. (Examples of such include the recently approved DOE/NRC MOU on the production of tritium in commercial LWRs and the staff's current efforts with DOE to develop an MOU on the Cooperation and Support for Demonstration Phase (Phase I) of DOE Hanford Tank Waste Remediation System Privatization Activities.) Source for authority for reimbursement could vary from project to project. NRC generally will not participate in projects and activities pertaining to DOE's responsibilities unless Congress appropriates resources to NRC for such activities. Exceptions will be considered by NRC on a case-by-case basis and only if DOE reimburses NRC for its full agency cost.

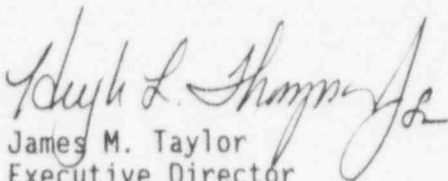
COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

RECOMMENDATION:

That the Commission:

Approve and issue the attached MOU between the DOE and NRC.


James M. Taylor
Executive Director
for Operations

Attachment: MOU

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Thursday, January 9, 1997.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Thursday, January 2, 1997, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF ENERGY AND THE NUCLEAR REGULATORY COMMISSION
FOR
COOPERATION IN SUPPORT OF SIGNIFICANT PROJECTS AND ACTIVITIES

I. Introduction

The Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) in recognition of a mutual commitment to protect public health and safety, common defense and security, and the environment have developed this Memorandum of Understanding (MOU) to establish a framework for carrying out significant projects and activities where joint cooperation between DOE and NRC is desirable.

II. Authority

The Atomic Energy Act of 1954, as amended, including but not limited to Sections 31, 33, 91, and 161(i); the Energy Reorganization Act of 1974, including Sections 104, and Section 301(a) of the Department of Energy Organization Act of 1977 authorize DOE to engage in various activities involving nuclear materials and facilities. Sections 53, 57, 62, 63, 81, 103, 104, and 161b, of the Atomic Energy Act of 1954, as amended, and Section 201(f) of the Energy Reorganization Act of 1974 authorize NRC to license and establish by rule, regulation, or order, standards, and instructions to govern the possession and use of special nuclear material, source material, or byproduct material and the construction and operation of certain facilities to protect health or to minimize danger to life or property, or to promote the common defense and security. This agreement is designed to supplement the February 24, 1978 DOE/NRC MOU. The DOE/NRC MOU of February 24, 1978, establishes an overall management policy regarding interagency relationships in the conduct of research programs and related areas and includes within its scope those guidelines governing DOE work performed by NRC.

III. Purpose

The purpose of this MOU is to provide the basis for DOE and NRC to cooperate on significant projects and activities of mutual interest.

This MOU does not address DOE/NRC interaction with respect to those DOE facilities which by statute are required to be licensed or otherwise regulated by NRC under the Energy Reorganization Act of 1974, the Nuclear Waste Policy Act or other applicable law, or with respect to material and facilities within the responsibility of the DOE Office of Naval Reactors.

IV. Agreements between Parties

A. General

1. DOE and NRC will cooperate in the timely and orderly completion of projects and activities undertaken pursuant to this MOU with due regard for public health and safety, protection of the environment, and common defense and security. Essential to complying with the spirit of this MOU is maintaining a relationship between the agencies marked by open and candid communications at all levels.
2. Toward these goals, DOE and NRC will explore together the development of specific MOUs to support NRC involvement in projects and activities in areas where joint cooperation is desirable, such as the efforts covered by the DOE/NRC MOU on tritium production dated May 22, 1996.

B. Planning

1. DOE and NRC will cooperate in long-range planning to ensure that both agencies are cognizant of the funding, resource, and timing requirements for these special projects and activities. Consultations and information exchanges between the DOE and NRC on long-range planning activities, operating experience or research results, briefings of advisory committees, and other normal functions are generally not subject to reimbursement.
2. DOE and NRC will inform each other and the Office of Management and Budget of activities that will require significant participation of both. Specific activities related to public health and safety, protection of the environment, and common defense and security for which DOE requests NRC involvement will require significant advance notification to allow NRC to seek appropriate resources in NRC's budget requests. DOE will provide NRC the necessary information required to support such budget requests. NRC generally will not participate in projects and activities pertaining to DOE's responsibilities unless Congress appropriates resources to NRC for such activities. Exceptions will be considered by NRC on a case-by-case basis and only if DOE reimburses NRC for its full agency cost.
3. This MOU shall not be used to obligate or commit funds or be used as the basis for the transfer of funds.

C. Interagency Interfaces

1. Matters of policy coordination, interpretation of established policy and implementation oversight are the responsibility of the Under Secretary for DOE and the Executive Director for Operations of the NRC. Functional responsibilities shall be assigned by each agency as necessary to fulfill the provisions of this MOU and any specific

MOUs entered into by DOE and NRC. The DOE Assistant Secretary for Environment, Safety and Health and the Executive Director for Operations of the NRC will be the initial points of contact for communication relating to carrying out the provisions of this MOU.

2. The day-to-day activities performed in accordance with this MOU are the responsibility of the designated DOE representative, in coordination with the designated NRC representative. Every attempt shall be made to address topics and issues at the project level. If they cannot be resolved at the project level, they will be raised through each agency's management chain, as necessary and appropriate.

D. Information Management and Independent Technical Oversight

1. Each agency recognizes that it is responsible for the identification, protection, control, and accounting of information used or otherwise furnished in connection with this MOU in accordance with its established procedures. This information consists of classified, proprietary, and procurement-sensitive information; Safeguards Information; and Unclassified Controlled Nuclear Information (UCNI) as described by Section 148 of the Atomic Energy Act of 1954, as amended.
2. NRC agrees to use available DOE information and reports and to comply with DOE administrative requirements for handling such information. DOE will provide NRC such additional information as NRC may require to identify issues related to public health and safety, protection of the environment, and common defense and security which may be necessitated by the project or activity. NRC will determine whether to establish a public docket for particular joint projects on a case-by-case basis.
3. DOE and NRC recognize the importance of providing timely and accurate information to the public regarding projects, activities, and regulatory decisions that may affect public health and safety, and protection of the environment. Meetings between DOE and NRC staff in connection with project activities that pertain to specific regulatory decisions or actions shall be governed by NRC's policy on open meetings (59 FR 43340, September 20, 1994).
4. Committees, such as the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste for NRC and the Defense Nuclear Facilities Safety Board for DOE, provide independent technical advice concerning facilities, safety studies, and related matters. As appropriate, DOE and NRC agree to support these types of independent reviews by providing readily available information or designating representatives to attend briefings related to their respective areas of responsibilities.

V. Other Provisions

1. Nothing in this MOU shall limit the rights or ability of either agency to exercise its authority independently with regard to matters that are the subject of this MOU.
2. Nothing in this MOU shall be deemed to establish any right nor provide a basis for any action, either legal or equitable, by any person or class of persons challenging a government action or a failure to act.
3. This MOU is not entered into for purposes of addressing issues related to possible changes in the scope of either party's authority to regulate nuclear materials and facilities.
4. This MOU may be further implemented by supplementary agreements in which authorized representatives of DOE and NRC may amplify or modify the policy or provisions in this MOU or any of its supplements, provided that any material modifications of the provisions or any of its supplements shall be subject to the approval of the authorized signatories of this MOU or their designated representatives.
5. This MOU shall be effective upon signature of the Secretary of Energy and the Chairman of the NRC and will remain in effect until terminated by mutual agreement or by the written notice of either party submitted six months in advance of termination. Amendments or modifications to this MOU may be made upon the written agreement of the parties.
6. In developing specific MOUs for particular projects and activities, the parties shall consider what provisions should be made for the handling of whistleblower issues or other citizen complaints.

Hazel R. O'Leary
Secretary
Department of Energy

Shirley A. Jackson
Chairman
Nuclear Regulatory Commission

Date

Date