

**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 I 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 I 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 I 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 I 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 I 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 I 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

Timothy Greten, Acting Director
Technological Hazards Division
National Preparedness Directorate
Federal Emergency Management Agency
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Arlington, VA 22202

B. NRC

Robert Lewis, Director
Division of Preparedness and Response
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.

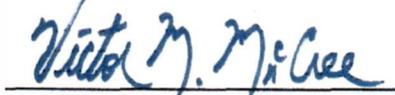
X. **TERMINATION.** The terms of this agreement, as modified with the consent of both parties, will remain in effect until terminated by both or either parties. The agreement may be extended by mutual written agreement of the parties. Either party upon 60 days written notice to the other party may terminate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