

Memorandum of Understanding Between the
Nuclear Regulatory Commission and Department of Labor

1. PURPOSE

The U.S. Nuclear Regulatory Commission (NRC) and the Department of Labor (DOL) enter into this agreement to facilitate coordination and cooperation concerning the employee protection provisions of Section 211 of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. 5851.

2. BACKGROUND

Section 211 of the ERA prohibits any employer, including a Nuclear Regulatory Commission licensee, license applicant or a contractor or subcontractor of a Commission licensee or applicant, from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate in any manner in any action to carry out the purposes of either the ERA or the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C 2011 et seq.

The NRC and DOL have complementary responsibilities in the area of employee protection. DOL has the responsibility under Section 211 of the ERA to investigate employee complaints of discrimination and may, after an investigation or hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees. NRC, although without authority to provide a remedy to an employee, has independent authority under the AEA to take appropriate enforcement action against Commission applicants and licensees and their contractors that violate the AEA or Commission requirements, (i.e., 10 CFR 50.7 and similar requirements in other parts of Title 10 of the Code of Federal Regulations) which prohibit discrimination against employees based on their engaging in protected activities. NRC enforcement action may include issuance of a Notice of Violation to the responsible applicant, licensee, contractor, and/or individual; imposition of a civil penalty; issuance of an order removing the responsible individual from licensed activities; and/or license denial, suspension, modification or revocation.

Although each agency will carry out its statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

3. AREAS OF COOPERATION

- a. DOL agrees to promptly notify NRC of any complaint filed with DOL alleging discrimination within the scope of Section 211 of the ERA by a Commission licensee, applicant or a contractor or

subcontractor of a Commission licensee or applicant. DOL will provide a quarterly listing of Section 211 complaints received. DOL will promptly provide NRC a copy of all complaints, decisions made prior to a hearing, investigation reports, and orders associated with any hearing or administrative appeal on the complaint. DOL will also cooperate with the NRC and shall keep the NRC informed on the status of any judicial proceedings seeking review of an order of DOL's Administrative Review Board issued in a proceeding under Section 211 of the ERA.

- b. NRC and DOL agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving employees of Commission licensees, license applicants, or contractors or subcontractors of Commission licensees or applicants. Each agency agrees to share all information it obtains concerning a particular complaint of discrimination and, to the extent permitted by law, will protect information identified as sensitive that has been supplied to it by the other agency. This cooperation does not require either agency to share information gathered during an investigation until the investigation is complete.
- c. For cases in which the NRC completes its investigation of a Section 211 complaint, and DOL's investigation is still ongoing, the NRC will provide the results of its investigation to the appropriate Occupational Safety & Health Administration (OSHA) contact, subject to Department of Justice (DOJ) constraints on the timing of the release of NRC investigation material. NRC will take all reasonable steps to assist DOL in obtaining access to licensed facilities and any necessary security clearances. Consistent with relevant statutes, NRC regulations, and the availability of NRC resources, the NRC will cooperate with DOL and make available information, agency positions, and agency witnesses as necessary to assist DOL in completing the adjudication record on complaints filed under Section 211.
- d. If the NRC receives a complaint concerning a possible violation of Section 211, it will inform the complainant that a personal remedy is available only through DOL and that the person must personally contact DOL in order to file a complaint. NRC will provide the complainant the local address and phone number of the OSHA office and advise the complainant that OSHA must receive the complaint within 180 days of the alleged discrimination.
- e. Each agency shall designate and maintain points of contact within its headquarters and regional offices for purposes of implementation of the MOU. Matters affecting program and policy issues will be handled by the headquarters offices of the agencies.

4. IMPLEMENTATION

The NRC official responsible for implementation of this agreement is the Chairman of the NRC. The DOL official responsible for implementation of this agreement is the Secretary of Labor.

5. AMENDMENT AND TERMINATION

This Agreement may be amended or modified upon written agreement by both parties to the Agreement.

The Agreement may be terminated upon ninety (90) days written notice by either party.

6. EFFECTIVE DATE

This agreement is effective when signed by both parties.

/s/ Shirley Ann Jackson
Chairman
U.S. Nuclear Regulatory Commission

Dated: 09/01/98

/s/ Alexis Herman
Secretary of Labor
U.S. Department of Labor

Dated: SEP 9, 1998