

December 21, 2000

MEMORANDUM TO: Those on the Attached List

FROM: William D. Travers */RA/*
Executive Director for Operations

SUBJECT: FINAL MEMORANDA OF UNDERSTANDING (MOU) BETWEEN THE
ACRS AND ACNW AND THE EDO

By green ticket, dated June 28, 2000, I requested office and region review and comment on the proposed revision to the MOUs between the ACRS/ACNW and the EDO. The attached final MOUs reflect consideration and resolution of those comments (Attachments 1 and 2). The comments and their resolution are in Attachment 3. Please review the MOUs, and if acceptable, provide your concurrence by January 10, 2001. If you have any questions, please contact Isabelle Schoenfeld, OEDO.

Attachments: As stated

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Attachments: As stated

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MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED: December 21, 2000

SUBJECT: FINAL MEMORANDA OF UNDERSTANDING (MOU) BETWEEN THE ACRS
AND ACNW AND THE EDO

Mail Stop

Karen D. Cyr, General Counsel	O-15	D21
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MEMORANDUM OF UNDERSTANDING

PARTIES: Advisory Committee on Nuclear Waste (ACNW)
Executive Director for the Advisory Committee on Reactor Safeguards (ACRS)
and the Advisory Committee on Nuclear Waste (ACNW)

Nuclear Regulatory Commission Staff (NRC)
Executive Director for Operations (EDO)

SUBJECT: ACNW PARTICIPATION IN THE DEVELOPMENT OF NRC RULES, SAFETY-RELATED GUIDANCE, LICENSING DECISIONS, AND RESOLUTION OF TECHNICAL ISSUES

BACKGROUND:

The ACNW was established by the Commission in June 1988 to provide the Commission with independent reviews of, and advice on, nuclear waste facilities. This includes review of license applications for land disposal of radioactive waste under 10 CFR Part 61 and the disposal of high-level radioactive waste in the proposed Yucca Mountain geologic repository (proposed Part 63). It also includes review of NRC regulatory actions under other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The ACNW has, at the request of the Commission, been providing advice on site decommissioning issues. The ACNW reports directly to the Commission.

The ACNW operations are governed by the provisions of the Federal Advisory Committee Act (FACA). ACNW operational practices are designed to encourage the public, industry, Indian nations, State and local governments, and other stakeholders to become involved in Committee activities. The ACNW is subject to the NRC regulations implementing FACA, set forth in 10 CFR Part 7. The ACRS and the ACNW work cooperatively in reviewing matters of interest to the Commission and, where the Committees' responsibilities overlap, divide work in the manner that best serves the interests of the Commission.

PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to establish a process for ensuring that (1) the NRC staff solicits ACNW views early in the development of NRC rules, safety- and risk- significant guidance, licensing decisions, and resolution of technical issues, (2) the NRC staff keeps the ACNW informed of emerging issues, and (3) the ACNW responds to staff requests for review and comment in a timely manner. This MOU:

- Identifies those areas within the scope of ACNW responsibility.
- Establishes a process to enable the ACNW and the NRC staff to establish plans and schedules that address the needs of the Commission, the NRC staff, and the ACNW.
- Establishes a process for ensuring that ACNW reviews are done at a sufficiently early stage to permit effective and efficient interaction.

1. AREAS WITHIN THE ACNW SCOPE OF RESPONSIBILITY

Areas within the ACNW scope of responsibility are identified in the following sections. The intent is to identify the areas of responsibility and not to imply any establishment of priorities. Priorities will be set by the Commission and identified in Commission directives and in the Committee's Action Plan.

a. NRC Regulations

The scope of the ACNW's responsibility encompasses the following parts of NRC's regulations found in Title 10 of the Code of Federal Regulations:

- Part 20 Standards for Protection Against Radiation
[Although the ACRS has primary responsibility for 10 CFR Part 20, ACNW maintains a continuing interest with respect to items that impact on radioactive waste handling and disposal facilities, such as radiological criteria for license termination. The ACRS/ACNW Office will keep ACNW informed of anticipated NRC activities based on material provided for ACRS consideration.]
- Part 30 Domestic Licensing of Byproduct Material
- Part 40 Domestic Licensing of Source Material, as applied to decommissioning and waste disposal
- Part 50 Domestic Licensing of Production and Utilization Facilities, as applied to decommissioning
- Part 51 Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, as applied to waste repository and other waste-related matters
- Part 60 Disposal of High-Level Radioactive Wastes in Geologic Repositories
- Part 61 Licensing Requirements for Land Disposal of Radioactive Waste
- Part 63 (Proposed) Disposal of High-Level Radioactive Waste in a Proposed Geologic Repository at Yucca Mountain, Nevada
- Part 70 Domestic Licensing of Special Nuclear Material, as applied to decommissioning
- Part 71 Packaging and Transportation of Radioactive Material, as applied to the management of radioactive waste

- Part 72 Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, as applied to off-site storage and on-site storage during decommissioning

b. Regulatory Activities

Regulatory activities within the ACNW's scope of responsibility include the following:

- Waste management safety-related rules
- Waste management safety-related regulatory guides, standard review plans, and branch technical positions
- Technical recommendations and guidance to States and Compacts regarding LLW issues
- Guidance on matters related to risk communication, defense-in-depth, and the use of the linear no threshold criteria
- Areas related to risk-informed and performance-based regulations
- Licensing and decommissioning activities for facilities within the scope of the ACNW's responsibility
- Selected pre-licensing activities for HLW and LLW facilities (e.g., site characterization plans, and analyses), as deemed appropriate in consultation with the Commission and the NRC staff
- NRC-sponsored research and technical assistance activities related to HLW and LLW management and disposal, and decommissioning

2. COORDINATION BETWEEN NRC OFFICES, REGIONS, AND THE ACNW

An individual from the OEDO will be assigned responsibility for coordinating implementation of this MOU with NRC offices reporting to the EDO and with the ACNW. An NRC staff office coordinator will be established in NRR, RES, and NMSS to coordinate implementation of the provisions of this MOU for their office. Upon request from the OEDO, the office coordinators will collect and provide to the OEDO information for development of draft proposed ACNW agendas for the three months following the next ACNW meeting. The OEDO coordinator will prepare the draft proposed agendas. The NRC staff office coordinators and the OEDO coordinator will meet with cognizant ACNW staff before each ACNW meeting. At this meeting, further information will be discussed to finalize the proposed ACNW agendas for the three months following the next ACNW meeting. The Administrative Officer/OEDO will issue the proposed agendas on a monthly basis to the Executive Director for ACRS/ACNW.

3. EARLY INTERACTION AND SELECTION OF MATTERS FOR ACNW REVIEW

The EDO, with guidance from the Commission as appropriate, will identify matters requiring ACNW consideration in the early stages of development to allow sufficient time to permit

effective and efficient review by the ACNW. Following discussions between the NRC staff office coordinators and the cognizant ACNW staff, the anticipated staff action will be included in the list of proposed ACNW agenda items provided in the EDO's monthly memorandum on proposed agenda items for the ACRS and the ACNW. The ACNW will inform the cognizant NRC staff office and the EDO's office on a timely basis whether it intends to review a specific matter. Decisions on whether to review will be made in accordance with Commission guidance, the needs of the EDO, and the recommendations of the responsible ACNW Subcommittee Chairman and the ACNW Action Plan.

The NRC staff will give the ACNW staff relevant information about papers being developed by the NRC staff for which there is to be no request for an ACNW review or information briefing. The EDO will send the ACNW a 90-day projection for such papers on a monthly basis. Rulemakings for the purpose of approving or amending NRC certifications for interim storage cask designs will be identified to the ACNW. The NRC staff will work with the ACNW to enable the ACNW to identify its review interests.

The ACNW will sometimes take up a matter for review on its own initiative with the agreement of the Commission. The ACNW will inform the EDO and the cognizant staff office when these activities are initiated and will coordinate these activities with the responsible NRC OEDO and staff office coordinators and staff.

4. ESTABLISHING A SCHEDULE FOR THE ACNW REVIEW

If the ACNW decides to review a specific matter, the response will be provided in a timely manner so that the Commission can have the benefit of the Committee's advice in making a decision on the matter. When the EDO has the authority for making the regulatory decision, the ACNW review will be performed before the EDO makes this decision. When a proposed regulatory action is to be published for public comment, the ACNW may review the matter both before and after public comment, as appropriate for the particular case. There may be circumstances where the ACNW will defer its review of a specific matter until after public comments have been received and addressed by the staff. In such cases, the Executive Director for ACRS/ACNW will notify the EDO.

The cognizant NRC staff office will ensure that the schedule for development of a specific matter includes sufficient time (normally about 60 days) for ACNW review before the date by which ACNW comments are desired. Subject to section 5.b, below, the documents that the ACNW needs for a full Committee discussion should be provided to the ACNW at least four weeks in advance of the discussion. When the documents cannot be provided within this time frame, the discussion will only be scheduled after agreement by the cognizant Office Director and the Executive Director for ACRS/ACNW. When the documents are so voluminous or complex as to preclude adequate Committee review in four weeks, the Executive Director for ACRS/ACNW will consult with the cognizant Office Director and establish other arrangements.

When a choice must be made between timely submission of documents to the Commission or submission first for ACNW review, the EDO and the Executive Director for ACRS/ACNW will consult with the Secretary of the Commission. It is expected that this will occur only in very unusual circumstances and that in these cases the Commission will make the decision as to the appropriate course of action.

5. SUBMITTING DOCUMENTS FOR ACNW REVIEW AND INFORMATION

a. Submittal of Documents

Twelve copies of documents related to a specific matter will be transmitted to the ACNW by the cognizant NRC Division Director by way of a memorandum addressed to the Executive Director for ACRS/ACNW requesting appropriate ACNW action. When sending a specific matter to the ACNW for review, the cognizant staff office will ensure that the ACNW is provided with copies of related documents, such as public comments and the staff's resolution of these comments, CRGR comments, if any, and, as appropriate, directly related differing professional opinions and/or differing professional views.

Five copies of documents related to a specific matter will also be provided to the ACNW for information by the NRC staff contact at the following stages, when applicable, with a memorandum addressed to the Executive Director for ACRS/ACNW, indicating that the documents are being sent to the ACNW for information:

- When the documents are sent to the Federal Register to be published for public comment.
- When the documents are sent to the Federal Register to be published as effective documents.

The Executive Director for ACRS/ACNW will define an ACNW staff user group for access to NRC staff documents in ADAMS. This group will be provided "viewer" rights by NRC staff to documents within the purview of the ACNW and prepared by offices reporting to the EDO when the documents are placed into ADAMS. This access is for the purpose of keeping individual ACNW staff members up-to-date on NRC staff actions that effect their area of responsibility. Access to or discussion of such documents by ACNW staff with ACNW members, or with other persons who are not regular Government employees, is subject to applicable provisions of section 5.b. and to guidance from the Office of the General Counsel.

b. Discussion and Handling of Restricted Distribution Documents

When the ACNW and the NRC staff have discussions on matters which involve predecisional information the following procedures will be used:

- NRC staff discussions with the ACNW of issues addressed in NRC predecisional or other restricted distribution documents will be open to the public, unless a Government in the Sunshine Act exemption applies.¹ Open discussion of agency matters facilitates external stakeholder input and provides an opportunity for the public to better understand Agency decisions.

¹ Under the FACA, meetings of advisory committees are generally required to be open, and documents provided to or prepared by advisory committees are generally required to be made available for public inspection and copying. However, FACA also provides that portions of advisory committee meetings may be closed to the public if they fall within exemptions contained in the Government in the Sunshine Act. Similarly, documents made available to or prepared for or by an advisory committee may be withheld from the public if they fall within an exemption contained in the Freedom of Information Act. There are a number of exemptions listed in the Sunshine Act and the Freedom of Information Act, and assistance in their interpretation may be obtained from the Office of the General Counsel.

- Discussion of the contents of a predecisional or other restricted document in a public meeting may result in the loss of the ability to withhold all or part of the document under Freedom of Information Act (FOIA) exemptions. To avoid the disclosure to the public of the contents of an agency predecisional or other restricted distribution document during NRC staff discussions with the ACNW, the contents of such a document will not be discussed at an open ACNW meeting, unless the discussion of the document at the meeting has been approved by the appropriate agency official, as described below.
- Issues that are discussed in a predecisional document can sometimes be addressed in a Committee meeting without reference to the contents of the predecisional document itself. In such circumstances, the discussion is not likely to compromise the ability to withhold the predecisional or other restricted distribution document under an FOIA exemption.
- ACNW meetings can be closed on such grounds as discussion of proprietary material under exemptions allowed by FACA. Members of the public may request a closed meeting if they believe an exemption applicable to them authorizes closure. The NRC staff may also request closure of a meeting, subject to the exemptions allowed by FACA. The closing of ACNW meetings requires a written request to the Chairman of the Commission, or the Chairman's designee, and review by the Office of the General Counsel, in accordance with 10 CFR 7.15. When requests for closure are received by the ACNW, the ACNW staff may need the assistance of the Office of the General Counsel (OGC) and NRC staff technical experts on an expedited basis to make accurate judgments as to what information should be protected.
- When the ACNW wishes to discuss all or part of a predecisional document at a meeting that is not exempt from the open meeting requirements of FACA, cognizant NRC staff will participate in an open ACNW Subcommittee or full Committee meeting if prior approval has been obtained from the Commission or its designee (when the Commission itself is to make the final decision on the matter addressed in the paper), or from the EDO (for other predecisional documents originating from the staff).
- In those cases where the Commission or the EDO (as applicable) has approved discussion of all or part of a predecisional document at an open meeting of the ACNW, the document may be transmitted to the ACNW staff by the cognizant Division Director for review by the Committee. The transmitted documents will be clearly marked as predecisional. Other applicable restrictions (e.g., proprietary information) on the release to the public of documents submitted to the ACNW should also be clearly marked on the documents to facilitate their proper storage and handling.
- All documents used by the Committee in its deliberations are required to be retained by the Committee as part of its FACA records, and will be retained for the life of the Committee. Requests for such documents by members of the public will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- In those cases where the ACNW will discuss issues addressed in a predecisional document, but will not disclose the contents of the document, the document may be

transmitted to the ACNW staff by the cognizant Division Director for transmittal to individual Committee members as background information. As long as any discussion of the issues that may also be addressed in such a document does not disclose the contents of the document in a meeting open to the public, the withholdability of the document under FOIA is not likely to be compromised. However, the use of the document itself in the Committee's deliberations will result in the document becoming part of the Committee's FACA record and will be retained for the life of the Committee, and may affect its withholdability under FOIA. As noted above, FOIA requests for such documents will be discussed with OGC to determine the status of the documents under FOIA exemptions.

- Infrequently, the ACNW requires access to Secret and Confidential National Security Information and Restricted Data in conjunction with activities within its scope of responsibility. ACNW member and staff access to this information will be authorized on the basis of the individual's need to know in accordance with NRC procedures.

6. RESOLVING ACNW COMMENTS

ACNW comments will be transmitted to the Commission or to the EDO, as appropriate, with copies to the cognizant Office Director, NRC staff office coordinator, and staff contact. The NRC staff contact will ensure that copies are provided, as appropriate, to other NRC staff members.

The EDO will ensure consideration of ACNW comments by the NRC staff and will respond to ACNW comments in a timely manner. The EDO may elect to consider ACNW comments on proposed or draft documents (e.g., proposed rules, draft regulatory guides) following the close of the public comment period, within the resolution of public comments. The Commission should have the ACNW views on major topics when it receives the staff views and recommendations. The NRC staff will take into account ACNW views on all rules and technical policy statements pertaining to nuclear safety matters. Staff papers should address all ACNW comments including those not endorsed by the staff.

The ACNW has a web site on which ACNW reports, meeting schedules and agendas, and meeting transcripts are posted. The ACNW will also post the EDO response to ACNW comments with the ACNW reports on this web site.

7. DEVIATIONS FROM THIS MOU

These procedures are established to facilitate NRC staff and ACNW interactions. Deviations from these procedures may at times be needed to carry out the NRC's mission. When this occurs, the procedures can be altered consistent with the needs of the NRC and the ACNW. Such changes will be implemented after being mutually agreed upon by the EDO and the Executive Director for ACRS/ACNW. The Executive Director for ACRS/ACNW will maintain a record of these deviations to provide a basis for future revisions of this MOU.

(Date)

William D. Travers
Executive Director for Operations

(Date)

John T. Larkins
Executive Director for ACRS/ACNW

MEMORANDUM OF UNDERSTANDING

PARTIES: Advisory Committee on Reactor Safeguards (ACRS)
Executive Director for the Advisory Committee on Reactor Safeguards (ACRS)
and the Advisory Committee on Nuclear Waste (ACNW)

Nuclear Regulatory Commission Staff (NRC)
Executive Director for Operations (EDO)

SUBJECT: ACRS PARTICIPATION IN THE DEVELOPMENT OF NRC RULES, SAFETY-
AND RISK-SIGNIFICANT GUIDANCE, LICENSING DECISIONS, AND
RESOLUTION OF TECHNICAL ISSUES

BACKGROUND:

The ACRS was established as a statutory Committee to the Atomic Energy Commission (AEC) by a 1957 amendment to the Atomic Energy Act of 1954. The functions of the Committee are described in Sections 29 and 182b of the Act. The Energy Reorganization Act of 1974 transferred the AEC licensing functions to the NRC, and the Committee has continued in the same advisory role to the NRC.

The ACRS reports directly to the Commission. It provides the Commission with independent reviews of, and advice on, the safety of proposed or existing NRC licensed reactor facilities and the adequacy of proposed safety standards. The ACRS reviews power reactor and fuel cycle facility license applications for which the NRC is responsible and the safety- and risk-significant NRC regulations and guidance relating to these facilities. On its own initiative, the ACRS may conduct reviews of specific generic matters or nuclear facility safety- and risk-significant items. The Committee also advises the Commission on safety- and risk-significant technical issues, and performs other duties as the Commission may request. Upon request from the DOE and with the consent of the Commission, the ACRS provides advice on U.S. Naval reactor designs and hazards associated with DOE nuclear activities and facilities. Upon request and with the consent of the Commission, the ACRS also provides technical advice to the Defense Nuclear Facilities Safety Board.

ACRS operations are governed by the Federal Advisory Committee Act (FACA), which is implemented through NRC regulations at 10 CFR Part 7. ACRS operational practices encourage the public, industry, state, and local governments, and other stakeholders to become involved in Committee activities. The ACRS and the ACNW work cooperatively in reviewing matters of interest to the Commission and, where the Committees' responsibilities overlap, divide work in the manner that best serves the interests of the Commission.

PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to establish a process for ensuring that (1) the NRC staff solicits ACRS views early in the development of NRC rules, safety- and risk-significant guidance, licensing decisions, and resolution of technical issues

(2) the NRC staff keeps the ACRS informed of emerging issues, and (3) the ACRS responds to staff requests for review and comment in a timely manner. This MOU:

1. Identifies those areas within the scope of ACRS responsibility.
 - Establishes a process to enable the ACRS and the NRC staff to establish plans and schedules that address the needs of the Commission, the NRC staff, and the ACRS.
 - Establishes a process for ensuring that ACRS reviews are done at a sufficiently early stage to permit effective and efficient interaction.

1. THE SCOPE OF ACRS RESPONSIBILITY

Areas within the ACRS scope of responsibility are identified in the following sections. The intent is to identify the areas of responsibility and not to imply any establishment of priorities. Priorities will be set by the Commission and identified in Commission directives and in the Committee's Action Plan.

a. NRC Regulations

The scope of ACRS responsibility encompasses the following parts of NRC regulations found in Title 10 of the Code of Federal Regulations:

- Part 20 Standards for Protection Against Radiation
- Part 21 Reporting of Defects and Noncompliance
- Part 26 Fitness for Duty Programs
- Part 50 Domestic Licensing of Production and Utilization Facilities
- Part 51 Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions
- Part 52 Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Plants
- Part 54 Requirements for Renewal of Operating Licenses for Nuclear Power Plants
- Part 55 Operators' Licenses
- Part 70 Domestic Licensing of Special Nuclear Material
- Part 72 Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste
- Part 73 Physical Protection of Plants and Materials
- Part 76 Certification of Gaseous Diffusion Plants

● Part 100 Reactor Site Criteria

b. Regulatory Activities

Regulatory activities that are within the scope of ACRS responsibility include:

- a. Reactor rules with safety- or risk-significance
- b. Reactor regulatory guides and other regulatory guidance with safety- or risk-significance
- c. Prioritization and resolution of generic safety issues
- d. License applications and applications for license renewals
- e. Risk-informed and performance-based regulation
- f. NRC-sponsored reactor research
- g. Reactor transient and accident analysis code certification
- h. Reactor licensee performance assessment and the analysis of plant operating experience
- i. Reactor regulatory burden reduction initiatives
- j. Development of regulatory requirements associated with the reactor use of new technology

2. COORDINATION BETWEEN THE NRC OFFICES, REGIONS, AND THE ACRS

An individual from the OEDO will be assigned responsibility for coordinating implementation of this MOU with NRC offices reporting to the EDO and with the ACRS. An NRC staff office coordinator will be established in NRR, RES, and NMSS to coordinate implementation of the provisions of this MOU for their office. Upon request from the OEDO, the office coordinators will collect and provide to the OEDO information for development of draft proposed ACRS agendas for the three months following the next ACRS meeting. The OEDO coordinator will prepare the draft proposed agendas. The NRC staff office coordinators and the OEDO coordinator will meet with cognizant ACRS staff before each ACRS meeting. At this meeting, further information will be discussed to finalize the proposed ACRS agendas for the three months following the next ACRS meeting. The Administrative Officer/OEDO will issue the proposed agendas on a monthly basis to the Executive Director for ACRS/ACNW.

The ACRS staff member who supports the ACRS Subcommittee with responsibility for the matter under review will normally serve as the ACRS contact for day-to-day interactions on that matter with the NRC staff. The NRC contact for a technical matter should be the NRC staff member who has the day-to-day technical responsibility for the item under ACRS consideration. Schedule and administrative matters should be coordinated through the NRC

staff office coordinator. The NRC contact for a technical matter should strive to keep the cognizant ACRS staff contact up-to-date on NRC progress on the matter. This should include verbal communication, and the transmittal of documents that provide the ACRS contact with an understanding of the technical issues.

Periodically, the ACRS may visit NRC Regional Offices or licensee facilities. Before arranging such visits, the ACRS staff will consult with the OEDO coordinator and will work through the responsible NRR and Regional Office project staff in making the necessary arrangements with the Region and licensees. When Regional Office staff are needed to support ACRS reviews, the request for this support will be made to the Regional Administrator by the Executive Director for ACRS/ACNW.

3. EARLY INTERACTION AND SELECTION OF MATTERS FOR THE ACRS REVIEW

The EDO, with guidance from the Commission as appropriate, will identify matters requiring ACRS consideration in the early stages of development to allow sufficient time to permit effective and efficient review by the ACRS. Following discussions between the NRC staff office coordinators and the cognizant ACRS staff, the anticipated staff action will be included in the list of proposed ACRS agenda items provided in the EDO's monthly memorandum on proposed agenda items for the ACRS and the ACNW. The ACRS will inform the cognizant NRC staff office and the EDO's office on a timely basis whether it intends to review a specific matter. Decisions on whether to review will be made in accordance with Commission guidance, the needs of the EDO, and the recommendations of the responsible ACRS Subcommittee Chairman and the ACRS Planning and Procedures Subcommittee.

The NRC staff will give the ACRS staff relevant information about papers being developed by the NRC staff for which there is to be no request for an ACRS review or information briefing. The EDO will send the ACRS a 90-day projection for such papers on a monthly basis. The NRC staff will work with the ACRS to enable the ACRS to identify its review interests.

The ACRS will sometimes take up a matter for review on its own initiative. The ACRS will inform the EDO and the cognizant staff office when these activities are initiated and will coordinate these activities with the responsible NRC OEDO and staff office coordinators and staff.

4. ESTABLISHING A SCHEDULE FOR THE ACRS REVIEW

If the ACRS decides to review a specific matter, the response will be provided in a timely manner so that the Commission can have the benefit of the Committee's advice in making a decision on the matter. When the EDO has the authority for making the regulatory decision, the ACRS review will be performed before the EDO makes this decision. When a proposed regulatory action is to be published for public comment, the ACRS may review the matter both before and after public comment, as appropriate for the particular case. There may be circumstances where the ACRS will defer its review of a specific matter until after public comments have been received and addressed by the staff. In such cases, the Executive Director for ACRS/ACNW will notify the EDO. The ACRS review will normally occur after the CRGR review such that the CRGR's findings will be available to the ACRS. The NRC staff should plan for this in its scheduling.

The cognizant NRC staff office will ensure that the schedule for development of a specific matter includes sufficient time for ACRS review. Staff should schedule ACRS presentations at least four weeks before the ACRS comments are desired. Subject to section 5.b, below, the documents in support of presentations to the full ACRS Committee should be provided to the ACRS at least four weeks in advance of the presentation. When the documents cannot be provided within this time frame, the discussion will only be scheduled after agreement by the cognizant Office Director and the Executive Director for ACRS/ACNW. Documents needed for discussion of a matter at a Subcommittee meeting will be provided no later than two weeks before the Subcommittee meeting. Absent some extraordinary need, the Subcommittee meeting will not be held if the documents cannot be provided two weeks prior to the meeting. Exceptions will be made only with the agreement of the cognizant Office Director and the Executive Director for ACRS/ACNW. When the documents are so voluminous or complex as to preclude adequate Committee review in four weeks, or Subcommittee review in two weeks, the Executive Director for ACRS/ACNW will consult with the cognizant Office Director and establish other arrangements.

When a choice must be made between timely submission of documents to the Commission or submission first for ACRS review, the EDO and the Executive Director for ACRS/ACNW will consult with the Secretary of the Commission. It is expected that this will occur only in very unusual circumstances and that in these cases the Commission will make the decision as to the appropriate course of action.

5. SUBMITTING DOCUMENTS FOR ACRS REVIEW AND INFORMATION

a. Submittal of Documents

Twenty copies of documents related to a specific matter will be transmitted to the ACRS by the cognizant NRC Division Director by way of a memorandum addressed to the Executive Director for ACRS/ACNW requesting appropriate ACRS action. When sending a specific matter to the ACRS for review, the cognizant staff office will ensure that the ACRS is provided with copies of related documents (e.g., public comments and the staff's resolution of these comments, CRGR comments, if any, and, as appropriate, directly related differing professional opinions and/or differing professional views).

Five copies of documents related to a specific matter will also be provided to the ACRS for information by the NRC staff contact at the following stages, when applicable, with a memorandum addressed to the Executive Director for ACRS/ACNW, indicating that the documents are being sent to the ACRS for information:

- k. When the documents are sent to the Federal Register to be published for public comment.
- l. When the documents are sent to the Federal Register to be published as effective documents.

The Executive Director for ACRS/ACNW will define an ACRS staff user group for access to NRC staff documents in ADAMS. This group will be provided "viewer" rights by NRC staff to documents within the purview of the ACRS and prepared by offices reporting to the EDO when

the documents are placed into ADAMS. This access is for the purpose of keeping individual ACRS staff members up-to-date on NRC staff actions that effect their area of responsibility. Access to or discussion of such documents by ACRS staff with ACRS members, or with other persons who are not regular Government employees, is subject to applicable provisions of section 5.b. and to guidance from the Office of the General Counsel.

b. Discussion and Handling of Restricted Distribution Documents

When the ACRS and the NRC staff have discussions on matters which involve predecisional information the following procedures will be used:

- NRC staff discussions with the ACRS of issues addressed in NRC predecisional or other restricted distribution documents will be open to the public, unless a Government in the Sunshine Act exemption applies.² Open discussion of agency matters facilitates external stakeholder input and provides an opportunity for the public to better understand Agency decisions.
- Discussion of the contents of a predecisional or other restricted document in a public meeting may result in the loss of the ability to withhold all or part of the document under Freedom of Information Act (FOIA) exemptions. To avoid the disclosure to the public of the contents of an agency predecisional or other restricted distribution document during NRC staff discussions with the ACRS, the contents of such a document will not be discussed at an open ACRS meeting, unless the discussion of the document at the meeting has been approved by the appropriate agency official, as described below.
- Issues that are discussed in a predecisional document can sometimes be addressed in a Committee meeting without reference to the contents of the predecisional document itself. In such circumstances, the discussion is not likely to compromise the ability to withhold the predecisional or other restricted distribution document under an FOIA exemption.
- ACRS meetings can be closed on such grounds as discussion of proprietary material under exemptions allowed by FACA. Members of the public may request a closed meeting if they believe an exemption applicable to them authorizes closure. The NRC staff may also request closure of a meeting, under the exemptions allowed by FACA. The closing of ACRS meetings requires a written request to the Chairman of the Commission, or the Chairman's designee, and review by the Office of the General Counsel, in accordance with 10 CFR 7.15. When requests for closure are received by the ACRS, the ACRS staff may need the assistance of the Office of the General Counsel (OGC) and NRC staff technical experts on an expedited basis to make accurate judgments as to what information should be protected.

² Under the FACA, meetings of advisory committees are generally required to be open, and documents provided to or prepared by advisory committees are generally required to be made available for public inspection and copying. However, FACA also provides that portions of advisory committee meetings may be closed to the public if they fall within exemptions contained in the Government in the Sunshine Act. Similarly, documents made available to or prepared for or by an advisory committee may be withheld from the public if they fall within an exemption contained in the Freedom of Information Act. There are a number of exemptions listed in the Sunshine Act and the Freedom of Information Act, and assistance in their interpretation may be obtained from the Office of the General Counsel.

- When the ACRS wishes to discuss all or part of a predecisional document at a meeting that is not exempt from the open meeting requirements of FACA, cognizant NRC staff will participate in an open ACRS Subcommittee or full Committee meeting if prior approval has been obtained from the Commission or its designee (when the Commission itself is to make the final decision on the matter addressed in the paper), or from the EDO (for other predecisional documents originating from the staff).
- In those cases where the Commission or the EDO (as applicable) has approved discussion of all or part of a predecisional document at an open meeting of the ACRS, the document may be transmitted to the ACRS staff by the cognizant Division Director for review by the Committee. The transmitted documents will be clearly marked as predecisional. Other applicable restrictions (e.g., proprietary information) on the release to the public of documents submitted to the ACRS should also be clearly marked on the documents to facilitate their proper storage and handling.
- All documents used by the Committee in its deliberations are required to be retained by the Committee as part of its FACA records, and will be retained for the life of the Committee. Requests for such documents by members of the public will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- In those cases where the ACRS will discuss issues addressed in a predecisional document, but will not disclose the contents of the document, the document may be transmitted to the ACRS staff by the cognizant Division Director for transmittal to individual Committee members as background information. As long as any discussion of the issues that may also be addressed in such a document does not disclose the contents of the document in a meeting open to the public, the withholdability of the document under FOIA is not likely to be compromised. However, the use of the document itself in the Committee's deliberations will result in the document becoming part of the Committee's FACA record and its being retained for the life of the Committee, and such use may affect its withholdability under FOIA. As noted above, FOIA requests for such documents will be discussed with OGC to determine the status of the documents under FOIA exemptions.
- Infrequently, the ACRS requires access to Secret and Confidential National Security Information and Restricted Data in conjunction with activities within its scope of responsibility. ACRS member and staff access to this information will be authorized on the basis of the individual's need to know in accordance with NRC procedures.

6. RESOLVING ACRS COMMENTS

ACRS comments will be transmitted to the Commission or to the EDO, as appropriate, with copies to the cognizant Office Director, NRC staff office coordinator, and staff contact. The NRC staff contact will ensure that copies are provided, as appropriate, to other NRC staff members.

The EDO will ensure consideration of ACRS comments by the NRC staff and will respond to ACRS comments in a timely manner. The EDO may elect to consider ACRS comments on proposed or draft documents (e.g., proposed rules, draft regulatory guides) following the close

of the public comment period within the resolution of public comments. The Commission should have the ACRS views on major topics when it receives the staff views and recommendations. The NRC staff will take into account ACRS views on all rules and technical policy statements pertaining to nuclear safety matters. Staff papers should address all ACRS comments including those not endorsed by the staff.

The ACRS has a web site on which ACRS reports, meeting schedules and agendas, and meeting transcripts are posted. The ACRS will also post the EDO response to ACRS comments with the ACRS reports on this web site.

7. DEVIATIONS FROM THIS MOU

These procedures are established to facilitate NRC staff and ACRS interactions. Deviations from these procedures may at times be needed to carry out the NRC's mission. When this occurs, the procedures can be altered consistent with the needs of the NRC and the ACRS. Such changes will be implemented after being mutually agreed upon by the EDO and the Executive Director for ACRS/ACNW. The Executive Director for ACRS/ACNW will maintain a record of these deviations to provide a basis for future revisions of this MOU.

(Date)

William D. Travers
Executive Director for Operations

(Date)

John T. Larkins
Executive Director for ACRS/ACNW

**RESOLUTION OF OFFICE/REGION COMMENTS ON
MOUs BETWEEN NRC AND ACRS/ACNW**

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
Region I	1	General	Since Regions have little opportunity to serve in a lead role for staff presentations to these committees, we have no comments with the material already addressed in the draft.	None required.
	2	General	Over the years, ACRS subcommittees have conducted at least two, somewhat formal, visits to Region I. In support of those visits, we prepared presentations that dealt with regional operations and issues. If ACRS intends to continue that program, we may want to frame it in the MOU.	Reference to the Regions has been added in Section 2, and the contact for ACRS visits identified.
	3	General	A number of years ago, an ACRS subcommittee used to review operating experience (i.e., events) and screen them to select ones for presentation to the full committee. That activity has been dormant for a while, but if it's still alive, then maybe it should be framed also.	No revision: The level of the MOU does not provide for specifying specific activities of ACRS Subcommittees.
Region II	4	General	We have reviewed the draft Memoranda of Understanding as submitted with your June 28 th e-mail. We support the comments made to you from Region I and from Region III.	None required.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	5	Section 6 Section 4	The memoranda appear to provide procedures/expectations in only one direction (e.g., there is a requirement under Section 6 for the staff to ensure that ACRS views on all rules, etc., are reflected in final SECY papers; there should be a provision, similar to that outlined in Section 4, for the ACRS/ACNW to ensure timely response so as to not significantly delay submission to the Commission).	The need for timely response by the ACRS has been added in Section 4.
	6	Section 5.a	The memoranda requires the submission of XX number of copies of documents. The memoranda should be modified to allow provisions for electronic versions to reduce the burden.	No revision: The ACRS is not set up to review documents in an entirely electronic mode. Therefore, paper documents have to be generated at some point in the review process. The present process distributes the burden associated with making multiple copies to various parts of the NRC staff.
Region III (contd.)	7	Section 1.a	In the memorandum for the ACNW, recommend including Part 30, since there are some sections dealing with waste and decommissioning.	Reference to Part 30 has been included.
	8	General	Region III agrees with the comments provided by Region I and has two additional comments.	None required.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	9	Section 1.a	The ACRS draft MOU lists the scope of the ACRS responsibilities. Absent from this list is Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data." We recognize that Part 95 is incorporated through reference in Part 76.	No revision. Part 95 is not within the scope of ACRS purview.
	10	Section 5.b	The ACRS draft MOU provides significant detail for handling predecisional/proprietary information; however, there is no discussion on handling National Security Information or Restricted Data. Obviously, NSI/RD data could be construed as proprietary, but there may be some additional "need-to-know" criteria.	The section title has been changed to "Discussion and Handling of Restricted Distribution Documents" and the handling of secret and confidential national security information and restricted data is now addressed.
Region IV	11	General	Region IV agrees with the comments submitted by Region I concerning the subject.	None required.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
NRR	12	Section 4 (2 nd para.)	The decision on whether to continue with a meeting if documents cannot be made available within the required time frame is assigned to the EDO and ACRS/ACNW Executive Director. Is the intent that the EDO himself be involved in these scheduling arrangements? We recommend that this be handled first at the ACRS staffer-NRC office coordinator level, before being pushed up the respective chains of command.	The decision to move forward with an ACRS meeting if the review documents are not available in the required time frame has been assigned to the cognizant Office Director and the Executive Director for ACRS/ACNW. It is believed that this level of control is appropriate for scheduling ACRS meetings for items with less than the specified review time.
	13	Section 2 (1 st and 2 nd paras.)	There are references to "EDO office coordinators" and "NRC staff coordinator for the responsible office." These references apparently are to the same individual; a consistent reference should be used throughout the MOU to minimize confusion.	The two noted terms have been merged into a single term, "NRC staff office coordinator."
NRR (contd.)	14	Section 2 (2 nd para.)	There is a condition "...as long as the office coordinator is informed of any decisions..." in interactions between the ACRS staff engineer and NRC staff. The responsibility for this notice should be defined to include coordination and scheduling information.	The MOU has been revised to emphasize that technical issues should be coordinated through the office technical contact, and scheduler and administrative matters should be coordinated through the NRC staff office coordinator.

Office/ Region	Comment Number	Referenc ed Part of MOU	Comment	Resolution
	15	Section 1.b	We recommend that the term "safety-related" be replaced with wording similar to "items with safety or risk significance" to reflect the fact that ACRS reviews involve more than just safety-related reactor issues. For example, severe accident mitigation is accomplished by equipment important to safety.	The revision has been made as suggested.
	16	Section 4 (1 st para.)	The proposed MOU does not specify whether CRGR reviews are conducted prior to, or after, the ACRS' review. The current MOU specifies CRGR reviews after ACRS' review for rules and policy papers; and specifies CRGR reviews prior to ACRS' review for safety guidance.	The ACRS MOU has been revised to indicate that the ACRS review normally occurs after the CRGR review. The basis is that the ACRS will review a more complete representation of the staff position.
	17	Section 5.a	The MOU provides for the transmittal of 20 copies of documents by the staff. With the use of ADAMS, should electronic distribution be considered in lieu of paper distributions?	See resolution to Comment No. 6.
	18	Section 5.a	The required copies are being transmitted over the Office Director's signature. The current practice is for the copies to be transmitted over the Division Director's signature, or lower in the case of documents such as topical reports. This is especially the case when we want the ACRS to review a draft version. Requiring office director memos would essentially require the document to be complete and significantly increase the time necessary to complete the transmittal package.	Both MOUs were revised to indicate that review documents are transmitted to the ACRS/ACNW by the cognizant Division Director.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	19	Section 5.a	The CRGR comments are supposed to be included with the submittal package. Under current practice for review of rules and policy papers, CRGR reviews are conducted subsequent to ACRS' review. We recommend the words "if any" be added following "CRGR comments."	As suggested, the phrase "if any" has been added.
NRR (contd.)	20	Section 5.a (3 rd para.)	ADAMS viewer access rights is requested for ACRS staff engineers when the documents are placed in the concurrence process. We recommend that this be changed to "when the document is transmitted to ACRS," vice when it is placed in concurrence. In addition, the same paragraph specifies that ADAMS viewer access should be given to the cognizant ACRS staff engineer. We recommend the use of a user group, vice individual ACRS staff engineers, to facilitate ADAMS processing of security access rights.	For the purpose of keeping individual ACRS staff members up to date, an ACRS staff user group will be established that will be provided with access to documents when they are placed into ADAMS.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	21	Section 6	<p>The draft MOU states, "On all matters except those that demand action to the contrary . . . the EDO will respond to ACRS comments on a specific matter before taking final action on that matter, or before submitting it for Commission approval." While ACRS briefings should be scheduled to support the ACRS' schedule for providing input to the Commission, the expectation that the EDO respond to ACRS comments before taking final action or submitting it for Commission approval may significantly increase the time necessary to complete some tasks. We recommend replacing this sentence with "The EDO will assure consideration of ACRS comments by the NRC staff" followed by the sentence, "Commission papers, if any, should address all ACRS comments including those not endorsed by the staff."</p>	<p>The proposed revision has been incorporated to ensure that the response to ACRS comments continues to be handled in an efficient and expeditious manner.</p>
RES	22	P. ACRS-3	<p>It is noted that the Offices' ACRS coordinators will coordinate interactions with the ACRS staff. While the Office ACRS coordinators can and do serve a useful purpose in tracking down ACRS/staff issues within the office and proposing ACRS review topics three months in advance, they should not be the intermediary between the ACRS staff engineers and the technical staff. RES suggests that the Office coordinators serve as a focal point for coordinating future agendas and establishing and addressing changes in schedules.</p>	<p>See resolution of Comment No. 14.</p>

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
RES (contd.)	23	P. ACRS- 4 P. ACRS- 6	Page ACRS-4 states that review will be performed before the Commission decision. Page ACRS-6 states that the EDO will respond to ACRS comments before submitting the issue for Commission approval. While the latter provision was in the previous ACNW MOU, it is a change from the previous ACRS MOU. If by "respond" a formal letter to the ACRS chairman from the EDO is meant, this is a change from past RES practice. RES addresses ACRS comments in a Commission paper but the formal response to the ACRS might be after the Commission paper has been sent. RES suggests that the prior schedule of response not be changed. Otherwise, additional time in RES schedules would have to be provided in order to formally transmit a response to the ACRS chairman in advance of sending a paper to the Commission.	See resolution of Comment No. 21
	24	P. ACRS- 5	The MOU states that when documents cannot be provided to the ACRS 4 weeks before a full committee meeting (2 weeks for a subcommittee meeting), the meeting will only be held after agreement by the EDO and the Executive Director for ACRS (also subcommittee chairman for subcommittee meetings). RES suggests that a discussion of the schedule for such situations between the responsible Office Director and the ACRS Executive Director should suffice.	Proposed revision incorporated; see resolution of Comment No. 12.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	25	P. ACRS- 5	<p>The MOU requires that the staff send other documents to the ACRS along with the document to be reviewed: public comments and the staff's resolution, CRGR comments, and "any directly related differing professional opinions and/or differing professional views." In the previous MOU, the corresponding requirement included the phrase "as appropriate." The DPV process is clearly described in the management directive on the subject as being informal. Resolved DPVs are not put into the public domain without specific written request of the submitter and the identity of the submitter is protected throughout the process. Further, DPOs do not go into the public domain until the subject has been dispositioned by the EDO. RES suggests that, as a minimum, the modifying phrase be returned. Preferably, the MOU should be silent on DPO/DPVs, leaving the treatment before the ACRS to the management directive on the subject.</p>	<p>The MOUs have been revised to include the proposed phrase "as appropriate" in determining whether related DPOs/DPVs are included with the review package.</p>

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
RES (contd.)	26	P. ACRS- 5 P. ACRS- 6	<p>The present MOU seems to imply that requests for appropriate ACRS action can be forwarded to the ACRS staff by the Office contact. RES agrees with this approach. Page ACRS-5 now indicates that non-predecisional documents require the signature of the Office Director. For predecisional documents, Page ACRS-6 indicates that consideration of such documents at an open meeting requires the approval of the Commission for decisions they will ultimately make or the EDO for decisions he will ultimately make. RES notes that the Commission ultimately approves certain regulatory guides, all rules, and all policy decisions. Therefore, a plain language reading of the MOU would indicate that Commission approval would be required to bring all documents related to these issues before the ACRS, even at the early stages desired by the ACRS and the staff. If early stages of review are to be excluded from the meaning of this requirement, and if it is expected that only exceptional cases would require such Commission or EDO approval, clarification in the MOU is necessary. Otherwise, the logistical problems associated with this type of restriction may be difficult to overcome, inefficiencies will result, and scheduling of ACRS reviews will be more difficult and will take more time.</p>	<p>The MOUs require that a list of proposed agenda items be provided to the ACRS/ACNW through the EDO. The MOUs have been revised to specify that the cognizant Division Director (rather than Office Director) is responsible for transmitting individual review package to the ACRS/ACNW.</p>

Office/ Region	Comment Number	Referenc ed Part of MOU	Comment	Resolution
	27	P. ACRS- 5	The MOU specifically discusses viewer rights in ADAMS. Since the status of ADAMS and procedures for its use are under review by an agency task force, RES suggests that references to the stage of review be made in lieu of specific ADAMS language.	See resolution of Comment No. 20.
	28	P. ACRS- 6	The MOU notes that ACRS comments are forwarded to the Commission or to the EDO with copies to the Office coordinator and the staff contact. RES suggests a copy be sent to the Office Director as well.	The MOUs have been revised to include cognizant Office Directors in the distribution of ACRS comment letters.
NMSS	29	General	We wish to underscore our interest in having clarified means by which staff may brief the whole ACNW Committee on predecisional matters. As a minimum, we believe the MOU should reflect briefing options similar to those available to the Commission on matters requiring closed sessions. We suggest the EDO discuss with the Office of the General Counsel possible alternatives to procedures that currently allow for the briefing of no more than two Committee members in closed session. This approach is resource intensive and inefficient.	Section 5.b includes provisions discussed with OGC staff for discussing predecisional issues with the full ACRS/ACNW Committees.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	30	General	We note that other stakeholders have expressed interest in expanding regulations coverage within the scope of responsibility section of the MOU. We believe consideration of this suggestion be put aside at this time to allow the Committee to focus its resources and efforts on issues associated with the high-level waste repository.	Region III recommended including Part 30 in the Scope of the ACNW to include elements of waste and decommissioning; see Comment No. 7. Part 30 has been added to the Scope on the basis that the inclusion defines scope and not an activity list for the ACNW.
	31	Backgrou nd	This section contains a long, run-on sentence that detracts from the document. We suggest the sentence be edited for clarification.	Sentence has been edited for clarity.
	32	Section 1.a	a) The listing for 10 CFR Part 20 should be limited to those areas that apply to decommissioning. The note at the bottom of this section appears to indicate this; however, an asterisk beside the Part 20 listing would be clearer.	The existing Note has been put directly under the bullet for Part 20.
			b) The listing for 10 CFR Part 40 should also include decommissioning of other source material licensees, such as rare earth facilities.	The listing has been revised to make the Part 40 reference relative to decommissioning and waste disposal.
c) We suggest you list 10 CFR Part 51, since there are some sections that address the waste repository and other waste-related matters.			Part 51 has been included to address the noted issues.	

Office/ Region	Comment Number	Referenc ed Part of MOU	Comment	Resolution
			d) The listing for 10 CFR Part 70 indicates that it is limited to decommissioning. Additional clarification, (i.e., references to specific types of technical reviews; reviews of specific staff actions, such as for partial and/or final release), would be helpful.	No revision. This section of the MOU identifies the broad technical scope of the ACNW; not the regulatory document under consideration.
NMSS (contd.)	32 (contd.)	Section 1.a (contd.)	e) We suggest clarifying the listing for 10 CFR Part 71 (Packaging and Transportation) to reflect application to radioactive waste.	The proposed clarification has been incorporated.
			f) You may also wish the MOU to reflect decommissioning activities as they relate to byproduct material licensees.	New Section 1(b) includes the identified activity.
	33	Section 1.b	Consider listing, between your 4 th and 5 th bullets, reference to risk-informing regulatory efforts, such as, "Areas related to risk-informed, performance-based regulations (consistent with the Commission's <u>Final Probabilistic Risk Assessment Policy Statement</u>)," and with the risk-informed regulatory framework discussed in <u>SECY-99-100, Framework for Risk-Informed Regulation in the Office of Nuclear Material Safety and Safeguards</u>)."	A reference to risk-informed and performance-based regulations has been added to the list of regulatory activities within the scope of the ACNW.

Office/ Region	Comment Number	Referenc ed Part of MOU	Comment	Resolution
	34	Section 3 Para. 1	This paragraph addresses the selection of items to be proposed to the ACNW through the EDO's monthly memorandum on proposed agenda items. NMSS notes that approval of, and amendments to, NRC certified interim storage cask designs approved for use under General License provisions, are completed through rulemaking. As these rulemakings are numerous and do not involve policy issues, NMSS proposes that these particular rulemakings be exempted from the ACNW advance notification requirements presented in the draft MOU.	The MOU has been revised to note that rulemakings for the purpose of approving or amending NRC certifications for interim storage casks designs will be identified to the ACNW. The Committee will work with the NRC staff to identify its interest in reviewing any such action.
	35	Section 3 Para. 2	You may wish to clarify (as presented here with underlined sections) that the EDO "...will send the ACNW a <u>rolling 90-day projection for such papers on a monthly basis.</u> "	The sense of the proposed editorial revision has been incorporated.
	36	Section 4 Para. 2	Please clarify references to "about 60 days" and "four weeks." We suggest the following simplifying language: "The cognizant NRC staff office will ensure that the schedule for the development of a specific matter includes sufficient time for ACNW review. Staff should schedule ACNW presentations at least 30 days before the date by which ACNW comments are desired. Documents in support of these presentations should normally be provided to the ACNW at least 30 days before the staff presentation and scheduled Committee discussions on the matter."	The proposed revision has been incorporated.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
NMSS (contd.)	37	Section 5.a	In view of the Agency's move toward ADAMS, we suggest this section be revised to permit electronic distribution of documents, when feasible, using ADAMS. Additionally, the MOU should reflect how advance copies of documents that have NOT been entered into ADAMS, but that are in the concurrence process, may be transmitted to the ACNW. We suggest that electronic copy, in addition to hard copy, be an acceptable means of delivery to the ACNW in this case.	See resolution of Comment No. 6. In addition, Section 5.a provides for electronic distribution of documents to the ACRS/ACNW staffs at the time such documents are entered into ADAMS.
	38	Section 5.b	Staff suggests that less formal procedures for acquiring approval to discuss certain predecisional topics and for releasing to the ACNW certain categories of predecisional documents, currently exist, and others should be implemented. For example, predecisional documents may be released to the ACNW following concurrence at the division level, in some cases. At the Commission level, we suggest that commissioners' technical assistants could inform the staff about discussing predecisional topics and releasing predecisional documents, rather than the Commission itself. Moreover, identification of certain categories of documents for which release to ACNW would be allowed, should be considered. Such processes would be less burdensome than those currently proposed in the MOU.	See resolution of Comment No. 29.

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
	39	Section 6	Both "ACNW comments" and "ACNW views" are referred to throughout paragraphs 1 and 2 of this section. The document specifically states that the EDO will "...respond to ACNW comments..." and that NRC staff will "...ensure that ACNW views on all rules and policy statements pertaining to nuclear safety matters are reflected in final SECY papers..." These statements appear vague and we request greater clarification. Please describe these ACNW comments and views as "written ACNW comments to the EDO and/or Commission," "written ACNW views to the EDO and/or Commission," or "written per ACNW letter/report to the EDO and/or Commission." Such clarification will reduce uncertainty as to those ACNW comments and views that require staff response.	This section of each MOU has been revised to use "comments" as the predominant term with appropriate reference to "reports."
NMSS (contd.)	40	Section 7	Since this MOU is expected to be revised over the years, we suggest that deviations from it be documented. Hence, within this section, we recommend language that addresses the documentation of such deviations and exceptions in order to update future versions of the MOU.	The MOUs have been revised to indicate that the Executive Director of ACRS/ACNW will maintain a record of deviations to provide a basis for future revisions of the MOUs.
OIP	41	General	OIP has no comments on the subject draft MOUs.	None required.
OST	42	General	OST has reviewed the subject documents and has no comment.	None required

Office/ Region	Comme nt Number	Referenc ed Part of MOU	Comment	Resolution
OGC	43		Comments pertain primarily to the use of restricted distribution documents.	All proposed issues have been addressed. In particular, provisions for the use of predecisional information have been expanded to provide flexibility for the staff by distinguishing between referring to the issues or the contents of predecisional documents.

From: Luis Reyes
To: Isabelle Schoenfeld
Date: 12/27/00 7:47AM
Subject: Fwd: FINAL MOU BETWEEN ACRS & ACNW & THE EDO

Region II concurs in the revised MOUs.

CC: Bruce Mallett

From: Ellis Merschoff
To: Isabelle Schoenfeld
Date: 1/10/01 4:34PM
Subject: Re: Fwd: FINAL MOU BETWEEN ACRS & ACNW & THE EDO

RIV concurs.

From: James Wiggins
To: Isabelle Schoenfeld
Date: 1/16/01 11:59AM
Subject: CONCURRENCE ON MOU WITH ACRS/ACNW

Region I appreciates having its earlier comments incorporated into the MOUs.

We concur.

Jim

PS

Sorry for being slightly late with this.

CC: Marie Fudge

From: John Szabo
To: Isabelle Schoenfeld
Date: 1/17/01 1:51PM
Subject: ACRS/MOU

This is to confirm that OGC has no legal objection to the proposed ACRS and ACNW MOUs as revised by OEDO.

From: Mary Glenn Crutchley
To: Isabelle Schoenfeld
Date: 1/10/01 9:04AM
Subject: Concurrence - FINAL MOU BETWEEN ACRS & ACNW & THE EDO
Place: RidsNrrAdip

Isabelle...

The noted documents were distributed within the NRR office for a coordinated review. All reviews are completed and NRR concurs.

If you have any further questions, please let me know.

Thanks,
Mary Glenn

CC: Brenda Mozafari, Brian Sheron, Bruce Boger, David Matthews, Gary Holahan, Gene Suh, Jack Strosnider, Jacqueline Silber, John Monninger(...)

Ashok Thadani, Director, Office of Nuclear Regulatory Research concurred on the MOUs between the ACRS and ACNW and the EDO, via phone message to Isabelle Schoenfeld, OEDO, on January 2, 2001.

Richard Turtill, NMSS Coordinator to ACRS/ACNW concurred in the MOUs between the ACRS/ACNW and the EDO, via phone message to Isabelle Schoenfeld, OEDO, on January 19, 2001.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

Schoenfeld

Cyp: EDO
DEDMRS
DEDR
DEDM
AO

January 4, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: J. E. Dyer, Regional Administrator *J. Dyer*

SUBJECT: REVIEW OF FINAL MEMORANDA OF UNDERSTANDING
(MOU) BETWEEN THE ACRS AND ACNW AND THE EDO
(AITS R01-0056)

This responds to your memorandum of December 21, 2000, to Office Directors and Regional Administrators requesting concurrence on the subject memoranda. We appreciate the consideration given to our earlier comments on these documents. I concur on the subject memoranda.

cc: H. Miller, RA/RI
L. Reyes, RA/RII
E. Merschoff, RA/RIV
I. Schoenfeld, OEDO