

Council members and staff and agency inspectors operating under interagency agreements.

2. EFSEC and NRC agree to the greatest extent possible and in good faith to provide the other party with information relative to the spirit of this Memorandum.

3. EFSEC and NRC agree to meet at the call of either party at mutually agreeable times and places to exchange information on matters of common concern. Regardless of intervening meetings the parties agree to meet annually to keep each other apprised of planned activity for the ensuing year.

4. The EFSEC inspectors will not duplicate the regulatory activities of the NRC. To the extent possible EFSEC inspectors will coordinate their schedules and inspection activities with NRC so that their on-site activities avoid interruption to normal plant operations and maintenance.

5. EFSEC agrees to share with NRC information relative to its water chemistry, radiological, industrial safety and environmental monitoring programs. Consistent with requirements to protect confidential, proprietary, predecisional, and safeguards information, NRC agrees to share with EFSEC information relative to its plant construction and operation, radiological, health and safety monitoring programs. Each agency agrees to be sensitive to the needs of the other when designing its respective monitoring programs.

6. To the extent practicable EFSEC inspectors may observe NRC audits, reviews, inspections, drills and meetings. In the same way, the NRC inspectors may observe EFSEC audits, reviews, inspections, drills and meetings. The parties recognize that there will be occasions when, because of the sensitive nature of certain meetings, it may be necessary for the parties to conduct their activities privately and separately.

7. The parties agree as a routine procedure to provide the other party with information copies of inspection reports and final enforcement actions conducted under the authority of either party.

8. EFSEC and NRC agree to work cooperatively and to share information during actual emergency response events and during all emergency response drills and exercises. Upon arrival at the site, each party will advise the other of its presence and confer upon the status and adequacy of emergency response operations.

9. The NRC will use its best efforts to make available space in its inspector training courses, seminars and special orientation programs to accommodate the training needs of the EFSEC inspectors.

10. Nothing in this Subagreement is intended to restrict or extend the statutory or regulatory authority of either EFSEC or NRC.

11. This Subagreement shall take effect immediately upon signing by the Chairman of EFSEC and the Regional Administrator, NRC Region V and may be terminated upon 30 days written notice by either party.

12. The principal NRC point of contact for this Subagreement shall be the Regional Administrator, NRC Region V. The principal Washington State contact shall be the Chairman of EFSEC.

13. If any provision of this Subagreement, or the application of any provision to any person or circumstance is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,  
Regional Administrator.

Dated: March 7, 1985.

For the Washington Energy Facility Site Evaluation Council.

Curtis Eschles,  
Chairman.

Dated: February 19, 1985.

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#### **Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission**

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into November 4, 1980 (Published December 16, 1980, 45 FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU is set out below except that an attachment is not included. This attachment concerns membership on a steering committee.

#### **Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness**

#### *1. Background and Purpose*

This memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR Part 50, Appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness" that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans<sup>1</sup> 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 those FEMA 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 NRC to make radiological health and safety decisions in the

<sup>1</sup> Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, role, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

## II. Authorities and Responsibilities

**FEMA**—Executive Order 12148 charges the Director, FEMA, with the responsibility to ". . . establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2-101) and ". . . represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs." (Section 2-104.)

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning 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 adequacy). Notwithstanding the procedures which are set forth in 44 CFR 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim 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 on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim 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 standards and 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 adequacy); or (3) plans are adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

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 timely development and review of the plans.

An interim 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 standards and criteria of NUREG-0654/FEMA-REP-1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide

reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR 351, March 11, 1982. (47 FR 10758)].

**NRC**—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and Appendix E to 10 CFR Part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

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 the FEMA 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 as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

## III. Areas of Cooperation

**A. NRC Licensing Reviews.** FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and

# MEMORANDA OF UNDERSTANDING

preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA 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, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, 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. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. 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 General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this document shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

**B. FEMA Review of Offsite Plans and Preparedness.** NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory

responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

**C. Preparation for and Evaluation of Joint Exercises.** FEMA and NRC will cooperate in determining exercise requirements for licensees, State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of the objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR Part 350. 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 deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. Where there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial

exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

**D. Emergency Planning and Preparedness Guidance.** NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

**E. Support for Document Management System.** FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC, this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

**F. Ongoing NRC Research and Development Programs.** Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

**G. Public Information and Education Programs.** FEMA will take the lead in developing public information and education programs. NRC will 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 accident involving radioactive materials.

## IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee

on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee 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 NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State, and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1.)

**V. Working Arrangements**

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

**VI. Memorandum of Understanding**

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 9, 1985.

muel W. Speck,

Associate Director, State and Local Programs and Support.

51 FR 5265  
Published 2/12/86

**DEPARTMENT OF THE INTERIOR**

**Bureau of Mines**

**NUCLEAR REGULATORY COMMISSION**

**Nuclear Waste Repository Programs; Standard Operating Procedure**

**AGENCY:** Nuclear Regulatory Commission and Bureau of Mines Interior.

**ACTION:** Standard Operating Procedure for BOM Interagency Agreement With DOE/NRC.

**SUMMARY:** The purpose of this notice is to advise interested persons that a protocol has been proposed in order to provide a standard operating procedure (SOP) for Bureau of Mines (BOM) support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) to avoid a possible conflict of interest in specialized activities pertinent to Nuclear Waste Repository (NWR) programs. This SOP will formally go into effect April 2, 1986. The text of the SOP is published below.

**FOR FURTHER INFORMATION CONTACT:** Mr. David H. Tiktinsky, Project Manager, MS 623-SS, Division of Waste Management, NMSS, Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:**

**A Protocol**

To provide a Standard Operating Procedures (SOP) for Bureau of Mines (BOM) Support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) in Specialized Activities Pertinent to Nuclear Waste Repository (NWR) Programs.

**Concern of Possible Conflicts of Interest**

The NRC and the DOE have requested the services of the BOM relative to development and approval of Office of Civil Radioactive Waste Management Programs (OCRWMP). Because of the unique geotechnical and mining expertise of the BOM it is in the National interest to make this expertise available to ensure state-of-the-art development of NWR technology. The three principal types of activities where the BOM expertise is essential, and the agency likely to be in need of such expertise are:

| Activity  | Agency   |
|---|----------|
| Generic research.....   | NRC, DOE |
| Site specific characterization or design.....                               | DOE      |
| Technical assessment of a specific site and/or review of a design for same. | NRC      |

It is generally agreed that generic research as it relates to OCRWMP and the results of such research are of general public interest. BOM, NRC, and DOE agree to meet periodically to review proposed generic research to be undertaken by the BOM under the

provisions of this Agreement to ensure that no conflict of interest exists with site-specific work.

Relative to site specific activities, if the same technical specialists were to be involved in the design and the review there could be concern over possible conflicts of interest. Fortunately the BOM has the requisite skills at a number of field Research Centers and hence has the ability to designate that specific Centers be assigned responsibility to assist DOE and NRC respectively on site specific problems. This separation of activities as enumerated below will provide the necessary isolation of DOE and NRC concerns as regards site specific activities to avoid the perception of conflicts of interest.

**Steps Taken To Avoid Possible Conflicts of Interest**

- BOM will dedicate personnel at their Pittsburgh (PRC) and Twin Cities (TCRC) Research Centers to work on DOE's OCRWMP.
- BOM will dedicate personnel at their Denver (DRC) and Spokane (SRC) Research Centers to work on NRC's High-Level Waste Repository (HLWR) program.
- Any nondedicated Bureau employee from either PRC or TCRC can work on NRC generic, nonsite specific research.
- Any nondedicated Bureau employee from DRC or SRC can work on DOE generic, nonsite specific research.
- BOM will maintain a record of which employees are dedicated to DOE and NRC site specific programs.
- BOM, Mining Research Directorate, will not work on other interagency agreements with DOE (OCRWMP) outside of this SOP.

**To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the New Repository Program for NRC Shall Not:**

- Discuss unpublished information on NRC's HLWR program with Bureau personnel working on DOE's OCRWMP; unpublished information will not include draft documents submitted to NRC because this output is routinely made available by NRC as public information.
- Discuss unpublished information on NRC's HLWR program with contractors working on DOE's OCRWMP at PRC and TCRC.

**To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the OCRWMP for DOE Shall Not:**

- Discuss unpublished information on DOE's OCRWMP with Bureau personnel working on NRC's HLWR program; unpublished information will not include