

**MEMORANDUM OF UNDERSTANDING
AMONG
THE DEPARTMENT OF HOMELAND SECURITY,
THE DEPARTMENT OF TRANSPORTATION, AND
THE U.S. NUCLEAR REGULATORY COMMISSION**

CONCERNING

**COOPERATION ON RADIOACTIVE MATERIALS TRANSPORTATION
SECURITY**

I. PARTIES

The parties to this memorandum of understanding (MOU) are the Department of Homeland Security (DHS), the Department of Transportation (DOT), and the United States (U.S.) Nuclear Regulatory Commission (NRC), hereafter referred to as the Parties. When designated officials are identified in various sections of this MOU, the officials include their designees. DHS and DOT participation in the MOU includes the participation of their relevant component agencies: the Transportation Security Administration (TSA), U.S. Customs and Border Protection (CBP), and the U.S. Coast Guard (USCG) for DHS; and the Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), and Federal Railroad Administration (FRA) for DOT.

II. PURPOSE

This MOU establishes a framework for allowing the Parties to coordinate, to the maximum extent practicable, their respective responsibilities and activities related to the secure transportation of radioactive materials within the U.S. or across U.S. borders. Coordination among the Parties will achieve the following goals:

- enhance collaborative exchanges;
- promote the leveraging of mutual interests;
- provide a forum for interdepartmental communication;
- reduce duplication of effort in areas of shared interest;
- maximize the success of efforts to develop capabilities that serve the needs of the Commission and the Departments in the execution of their homeland security and civil support missions; and
- promote the standardization of approach and policy on the transportation security of radioactive materials.

The goal of this MOU is to ensure that the transportation of radioactive material in the U.S. and across U.S. borders is carried out in a secure manner that protects the public health and safety; and in a manner that is not inimical to the common defense and security of the U.S.

III. AUTHORITIES

- a. DHS enters into this MOU pursuant to 6 U.S.C. §112(b); 49 U.S.C. §114; Homeland Security Presidential Directive (HSPD)-5; Presidential Policy Directive (PPD)-8 and PPD-21.
- b. DOT enters into this MOU pursuant to 49 U.S.C. §301, PPD-8 and PPD-21.
- c. Presidential Policy Directive (PPD-21), February 12, 2013, *Critical Infrastructure Security and Resilience* advances a national unity effort to strengthen and maintain secure, functioning and resilient critical infrastructure. It directs that the NRC regulate the transport of radioactive material and coordinate with, as appropriate, other Federal parties during these activities.
- d. In accordance with the Homeland Security Act of 2002, Public Law No. 107-296, 116 Stat. 2135, November 25, 2002 (Homeland Security Act) and PPD-21, DHS and DOT collaborate on security activities for all modes of transportation within the U.S. or across U.S. borders. Pursuant to the Aviation and Transportation Security Act, Public Law 107-71, 115 Stat. 597, November 19, 2001 (ATSA) and specific delegation by the Secretary of Homeland Security (currently DHS Delegation Number 7060.2), TSA acts as the lead Federal entity, with DOT collaboration, for transportation security, including hazardous materials and pipeline security.
- e. The NRC, under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), and Section 201 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), is authorized to license and regulate the receipt, possession, use, and transfer of “byproduct material,” “source material,” and “special nuclear material” (as defined in 42 U.S.C. 2014). The NRC’s authority to license air shipment(s) of plutonium is further governed by Section 201 of Public Law 94-79 (42 USC 5841 note), Section 5062 of Public Law 100-202, and Public Law 100-203.
- f. Nothing in this MOU shall diminish or otherwise affect the authority and activities of the respective Offices of Inspector General for NRC, DHS and DOT, consistent with the requirements of the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101, October 12, 1978, 5 U.S.C. App 3.

IV. BACKGROUND

Through legislative authorities and departmental delegations, TSA supports DHS' counterterrorism and critical infrastructure protection missions. TSA enters into this memorandum pursuant to 49 U.S.C. §§ 106(m) and 114(m); the Homeland Security Act, § 430; the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; PPD: Critical Infrastructure Security and Resilience (PPD-21), February 12, 2013; and PPD: National Preparedness (PPD-8), March 30, 2011. DHS and DOT were delegated responsibilities as Co-Sector-Specific Agencies for the Transportation Systems Sector under PPD-21. In addition, at the direction of the Secretary of Homeland Security, TSA has primary responsibility for developing the National Strategy for Transportation Security jointly with the Secretary of Transportation. 49 U.S.C. 114(s)(2).

CBP supports the mission of DHS and enforces hundreds of U.S. laws and regulations at the border, including those regarding the transportation of hazardous materials across the U.S. border. In general, border search authority permits “customs officers” to search without a warrant and without any suspicion any person, conveyance, or container that crosses the U.S. border. *See, e.g.*, 19 U.S.C. §§ 482, 1401, 1496, 1499, 1581, 1582.

The USCG is responsible for overseeing regulatory compliance in the transportation of hazardous materials by water. (Currently DHS Delegation No. 0170, Sec. 2(99) & 2(100); see also 6 U.S.C. 458(b), 551(d)(2)).

PHMSA is responsible for promulgating and enforcing regulations and administering a national safety and security program of multimodal hazardous materials (hazmat) transportation. PHMSA is also responsible for overseeing regulatory compliance in the shipment of hazardous materials and the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of multi-modal containers which are represented, marked, certified, or sold for use in the transportation of hazardous materials. 49 CFR § 1.97(b). Within DOT, except as provided in 49 CFR §1.97(b)(2), enforcement authority has been delegated to FAA, FMCSA, FRA, and PHMSA.

FAA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by air. 49 CFR § 1.83(d).

FMCSA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of containers which are represented, marked, certified, or sold for use in bulk transportation of hazardous materials by highway. 49 CFR § 1.87(d).

FRA is responsible for overseeing regulatory compliance in the transportation of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance,

reconditioning, repair or testing of containers which are represented, marked, certified, or sold for use in bulk transportation of hazardous materials by railroad. 49 CFR § 1.89(j).

Under the Atomic Energy Act of 1954, as amended (42 U.S.C. Chapter 23), the NRC regulates the possession, use and transfer of civilian radioactive material and is empowered to establish by rule or order, and to enforce such standards to govern these uses as the Commission may deem necessary or desirable in order to protect the common defense and security and promote the public health and safety of the U.S.

The NRC, under Section 204 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841), identifies the NRC's Director of Nuclear Material Safety and Safeguards as performing transportation security functions including:

1. Principal licensing and regulation involving all licensed facilities and materials associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.
2. Review safety and safeguards of all such licensed facilities and materials; such reviews shall include, but not be limited to-
 - a. monitoring, testing, and recommending upgrading of internal accounting systems for licensed special nuclear and other nuclear materials;
 - b. developing, in consultation and coordination with the Energy Research and Development Administration (now the Department of Energy), contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended.

V. COOPERATIVE FRAMEWORK

Consistent with the terms and conditions of this MOU, the Parties will coordinate, to the maximum extent practicable, their regulatory responsibilities related to the secure transportation of radioactive materials that pose a significant risk to public health and safety and the environment or the common defense and security.

The Parties recognize that the topical areas set forth in Attachment 1 of this MOU are important to development and deployment of an enhanced security strategy for the transportation of risk significant radioactive material in the U.S. and across U.S. borders. For the purposes of this MOU, the term “risk significant radioactive material” means radioactive material that requires security measures to be applied to it above prudent management practices. *See e.g.*, the International Atomic Energy Agency’s Nuclear

Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (Information Circular/225/Revision 5). In addition, the Parties will agree on the radioactive material, within the statutory and regulatory jurisdiction of a Party, for implementation under this MOU, on a case-by-case basis.

Attachment 1 of the MOU describes the infrastructure of the desired interactions between the Parties to this MOU. A series of annexes will be developed after approval of the MOU to establish the working arrangements between the NRC and the relevant component agencies within the signatory Departments. Working arrangements will provide the details of these interactions.

VI. IMPLEMENTATION

The Parties to this MOU commit themselves or their component agencies, as appropriate, to coordinate their programs and activities, to the maximum extent practicable, in order to improve transportation security of radioactive material in the U.S. or across U.S. borders while minimizing duplication, disruptions to transportation operations, and unnecessary costs imposed on transportation stakeholders and the public.

After the MOU has been signed, the Parties will support the development of annexes or work plans among the appropriate component agencies of each Department and the NRC to specifically delineate roles, responsibilities, resources, and actions needed to advance execution of subsections “a” through “l” in Attachment 1. To that end, each Party will designate one or more members to participate in a working group to develop a multi-year action plan, including specific timelines for implementing the Parties' general commitments, as set forth in Attachment 1.

VII. COORDINATION MEETINGS

The Parties will establish, at the minimum of one per year, regularly-scheduled coordination meetings; as appropriate.

VIII. GENERAL PROVISIONS

a. Principal Agency Contacts. Subject to updates by the Parties, Attachment 2 has the designated points of contact for this MOU.

b. Pre-Existing Agreements. Pre-existing agreements, or annexes between components of DHS, elements of DOT, or elements of NRC, such as the MOU between DHS and DOT dated September 28, 2004, or the MOU between DOT and NRC dated July 2, 1979, are not superseded by this MOU, and remain in effect until rescinded, modified, or incorporated into annexes to this MOU. DOT, DHS and NRC will review these pre-existing agreements to determine whether to amend, continue, or revoke them.

c. Severability. Nothing in this MOU or any supplement thereto is intended to alter or conflict with statutory provisions, regulations, orders, or directives of DHS, DOT, NRC, or any other Federal agency or entity. If a provision of this MOU, or any supplement thereto, is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU, and any supplement thereto, will remain in full force and effect.

d. Rights and Benefits. Nothing in this MOU is intended to diminish or otherwise affect the authority of the NRC, DOT or DHS, or of their respective component agencies, to carry out statutory, regulatory, or other official functions; nor is this MOU intended to create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the U.S., its departments, agencies, officers, or employees, state agencies or officers carrying out programs authorized under Federal law, or any other person.

e. Period of Agreement /Termination. This MOU shall be effective as of the date of final signature by the Parties and remain in effect until terminated by NRC, DOT, or DHS. The Parties agree to review this MOU every 5 years. This review may be waived if the Parties mutually agree, in writing, that such a review is not necessary. Parties may terminate this MOU by providing written notice at a minimum of 60 calendar days prior to the desired termination date, to the respective contacts listed in Attachment 2 herein.

f. Reimbursement. Unless otherwise agreed to under the provisions of Section h.3 of Attachment 1, each Party will be responsible for its own expenses incurred in carrying out activities under this MOU. The Parties agree to resolve any dispute over reimbursement for such activities through mutual negotiation. If the Parties are unable to resolve such a dispute, they agree to have the signatories to this MOU, or their approved designees, resolve the issue.

g. Amendment and Modification. If, in addition to the matters specifically covered in this MOU, any party identifies additional matters associated with the secure transportation of radioactive material that should be specifically included in this MOU, that party will request that the MOU be amended accordingly, and the Parties will meet to discuss the need for such an amendment. Any agreed upon amendment or modification must be in writing, and executed by the appropriate representatives of DHS, NRC, and DOT.

APPROVED BY:

U.S. NUCLEAR REGULATORY COMMISSION
Chairman Allison Macfarlane

Date

DEPARTMENT OF HOMELAND SECURITY
Secretary

Date

DEPARTMENT OF TRANSPORTATION
Secretary

Date