

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission
and the U.S. Department of Energy / National Nuclear Security Administration
Pertaining to the Emergency Response Data System

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the Department of Energy National Nuclear Security Administration (DOE/NNSA) enter into this Memorandum of Understanding (MOU) under the authority of the Atomic Energy Act of 1954, as amended, and Section 105 of Executive Order 12656 - Assignment of Emergency Preparedness Responsibilities.

The Atomic Energy Act of 1954, as amended, provides the NRC with exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

Nothing in this MOU is intended to restrict or expand the scope of regulatory authority of either the NRC or DOE/NNSA.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the agency responsible for regulating, in part, commercial nuclear power plant (NPP) safety and security.

B. Within the DOE/NNSA resides the National Atmospheric Release Advisory Center (NARAC), Office of Emergency Response. The NARAC is chartered, in part, to support DOE/NNSA regional and national emergency response teams, operations centers, and sites across the country by modeling the atmospheric transport of radiological contamination or material resulting from nuclear or non-nuclear events. Furthermore, NARAC supports the Department of Homeland Security (DHS) Interagency Modeling and Atmospheric Assessment Center (IMAAC) for radiological incidents. As described in Emergency Support Function #8 of the National Response Framework, IMAAC is the single point for coordination and dissemination of Federal dispersion modeling and hazard prediction products that represent the Federal position during actual or potential incidents involving hazardous chemical, biological, or radiological material releases. IMAAC supports the DHS National Operations Center, Federal Emergency Management Administration's National and Regional Response Coordinating Centers, and IMAAC stakeholders from the DHS, Department of Defense, DOE, Environmental Protection Agency, Department of Health and Human Services, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, and the NRC.

C. To promote greater efficiencies in modeling plume impact plots for radioactive releases from commercial NPPs, meteorological data collected by the NRC's Emergency Response Data System (ERDS) will be made available to NARAC for staff training, exercises, and event

assessment. The use of actual meteorological data from a selected NPP will significantly improve the quality and realism of staff training and event assessment of potential radiological concerns, and help inform national level response decisions.

III. Scope

A. This MOU defines the way in which NRC will provide DOE/NNSA with NPP meteorological data obtained and communicated by the ERDS.

B. ERDS data will be made available to DOE/NNSA through the ERDS website to facilitate scheduled staff training or exercises and ERDS maintenance or testing, when ERDS is available, or during events at NPP(s) when the affected sites have entered an emergency action level classification of site area emergency or higher.

C. DOE/NNSA will use ERDS data only for the assessment of an incident at a commercial NPP, staff training or exercises, and ERDS maintenance or testing.

D. Nothing in this MOU is intended to restrict or expand the statutory authority of the NRC, DOE/NNSA, or to affect or otherwise alter the terms of any agreement in effect; nor is anything in this MOU intended to restrict or expand the authority or activities of the parties on matters not within the scope of this MOU.

E. Nothing in this MOU confers upon DOE/NNSA the authority to (1) interpret or modify NRC regulations and NRC requirements imposed on any NRC licensee, Agreement State, or NRC-authorized user of ERDS information; (2) take enforcement actions; (3) issue confirmatory letters; (4) modify, suspend, or revoke a license issued by the NRC; or (5) direct or recommend NPP employees to take, or not take, any action. Authority for all such actions is reserved exclusively to the NRC.

F. This MOU is strictly for internal management purposes for each of the parties. It is not legally enforceable and shall not be construed to confer any binding obligation on either party, or a private right or cause of action for or by any person or entity.

G. This MOU is neither a fiscal nor funds obligation document. The details of the level of support to be furnished one party by the other with respect to funding will be developed in specific interagency agreements or other agreements, subject to availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-deficiency Act, 31 U.S.C. §1341.

IV. NRC General Responsibilities

A. The NRC will maintain, operate, and manage ERDS. NRC will communicate planned maintenance, test, and outage periods with ERDS users. NRC will promulgate and communicate information supporting ERDS use, maintenance, and operation.

B. The NRC will initiate and conduct all communications with and issue digital certificates to ERDS users as requested by DOE/NNSA and as approved by NRC – Office of Nuclear Security and Incident Response (NSIR).

C. The NRC will provide DOE/NNSA up to 10 digital certificates for use by designated personnel in accessing ERDS meteorological data during emergencies at nuclear power plants or for staff training or exercise purposes. The NRC will update these certificates as requested by DOE/NNSA; however, the NRC reserves the right to revoke digital certificates at any time.

V. DOE/NNSA General Responsibilities

A. DOE/NNSA through NARAC will, in cooperation with the NRC, establish a capability to receive ERDS meteorological data. To this end, DOE/NNSA will provide the necessary computer hardware and commercially-licensed software required for ERDS data transfer to users.

B. DOE/NNSA will provide the NRC with an initial list of designated persons serving as holders of ERDS digital certificates and update this list within 30 days of requesting a modification to the list of designated certificate holders.

C. DOE/NNSA will use ERDS only to access meteorological data in support of NARAC plume modeling.

D. DOE/NNSA shall not provide ERDS data to third parties outside of DOE without explicit permission by NRC/NSIR.

VI. Implementation

DOE/NNSA and the NRC agree to cooperate to assure that the following communications and information exchange protocol regarding ERDS are followed:

A. DOE/NNSA and the NRC agree in good faith to act and make available to each other information within the intent and scope of this MOU.

B. The NRC will protect all information in accordance with approved NRC Management Directives, established guidance and direction, and Commission policy. DOE/NNSA will protect all information in accordance with DOE Directives, established guidance and Departmental policy. Public release of information will be limited to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552, Title 10 of the Code of Federal Regulations, Part 2.390, and all other applicable authority. Subject to the Freedom of Information Act, decisions on disclosure of information to the public regarding projects and programs referenced in this MOU shall be made after consultations between the parties.

C. NRC will provide DOE/NNSA access to ERDS for staff training or emergency exercises with NPP sites capable of transmitting exercise data to ERDS. DOE/NNSA will coordinate with the NRC in advance to ensure ERDS availability.

VII. Contacts

A. The principal senior management contacts for this MOU will be the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, NRC, and the Deputy Associate Administrator for Emergency Operations, NNSA. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.

B. Identification of these contacts is not intended to restrict communication between NRC and DOE/NNSA staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this MOU, NRC and DOE/NNSA will work together to resolve these differences.

B. Differences between DOE/NNSA and NRC staff over issues arising out of this MOU will, if they cannot be resolved in accordance with Section VIII.A, be reviewed and resolved by the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, NRC, in coordination with the Deputy Associate Administrator for Emergency Operations, NNSA or designee.

C. Should differences remain following adjudication in accordance with Section VIII.B, differences shall be appealed in writing to the NRC's Director, Office of Nuclear Security and Incident Response. The Director, NSIR, shall attempt to resolve the difference in coordination with the Associate Administrator for Emergency Operations, DOE/NNSA.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This MOU will take effect after it has been signed by both parties.

X. Duration

This MOU remains in effect until terminated following a request for termination and after 30 days upon written notice of notification by either party.

XI. Modification or Amendment

This MOU will be subject to periodic reviews and may be amended upon written agreement by both parties.

XI. Separability

If any provision(s) of this MOU, or the application of any provision(s) to any person or circumstance, is held invalid, the remainder of this MOU and the application of such provisions to other persons or circumstances will not be affected.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Dated: 11/26/2013

James T. Wiggins, Director */RA/*

Office of Nuclear Security and Incident Response

FOR THE DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION
(DOE/NNSA)

Dated:

Joseph J. Krol

Associate Administrator for Emergency Operations

National Nuclear Security Administration (NNSA)