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# NRC AND DOE SIGN AGREEMENT ON SERVICES FOR PROTECTION OF CLASSIFIED INFORMATION

The Nuclear Regulatory Commission (NRC) has signed an agreement with the Department of Energy (DOE) to provide mutual security services for the protection of classified information that is released to federal contractors, licensees, certificate holders and grant recipients.

The agreement is an important step in ensuring that classified information is protected in an effective and efficient manner at facilities where both NRC and DOE have responsibilities, such as the United States Enrichment Corporation's gaseous diffusion plants.

Only a few NRC-regulated facilities have a need to possess and protect classified information. So-called safeguards information related to the physical security of regulated facilities is protected under a different legal requirement.

The agreement was signed under the National Industrial Security Program, established by a January 1993 Executive Order to serve as a single, integrated, cohesive industrial security approach for protecting classified information and preserving the country's economic and technological interests.

Raymond J. Brady, Director of Security, U.S. Nuclear Regulatory Commission, and Edward J. McCallum, Director, Office of Safeguards and Security, Department of Energy, signed the agreement for their respective agencies.

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**Memorandum of Understanding**
**Between the**
**Department of Energy And the United States Nuclear Regulatory Commission**
**Under The Provisions of The National Industrial Security Program**

## A. PURPOSE

This Memorandum of Understanding (MOU) defines security responsibilities and functions that the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) will perform at industrial facilities at which both agencies have security interests that are within the scope of Executive Order 12829, "National Industrial Security Program" (NISP), dated January 6, 1993. This MOU, however, excludes the Gaseous Diffusion Plants at Portsmouth and Paducah, which are separately addressed in the March 10, 1995 "Agreement Defining Security Responsibilities at the Paducah and Portsmouth Gaseous Diffusion Plants Between the Department of Energy's Office of Safeguards and Security and the Nuclear Regulatory Commission's Division of Security," the National Laboratories which are under the security responsibility of DOE and aspects of industrial security (e.g. radiological sabotage) not related to the protection of classified information.. The NRC and DOE agree to provide mutual security services for the protection of classified information released to or within industry on behalf of NRC or DOE using the specific requirements, restrictions and other safeguards as prescribed in the National Industrial Security Program Operating Manual (NISPOM) and NISPOM Supplement (NISPOMSUP) except as otherwise herein provided. Nothing in this MOU is intended to restrict or expand the authority or responsibilities of the DOE or the NRC under the Atomic Energy Act of 1954, as amended.

## B. BACKGROUND

Executive Order 12829 was published on January 6, 1993 and the NISPOM was approved by the Deputy Secretary of Defense, acting as the NISP Executive Agent, on October 31, 1994. Sections 102(c) and 202(c) of the Executive Order recognizes that NRC and DOE retain authority over information under their respective programs classified under the Atomic Energy Act of 1954, as amended. Further, Section 1-207a.(3) of the NISPOM states that each Cognizant Security Agency (CSA) is responsible for ensuring that redundant and duplicative security reviews and audit activities are held to a minimum, including those conducted at facilities under a mutual security interest. The NISPOM directs CSA's, in this case NRC and DOE, having mutual security interests in a facility to execute inter-agency agreements to fulfill this cost sensitive imperative. This MOU meets the provisions of that directive.

C. DEFINITIONS

1. For the purposes of this understanding an "industrial facility " shall mean a non-governmental organization, other than the National Laboratories and the United States Enrichment Corporation, at which both NRC and DOE have authorized either the possession of or access to (non-possessing facilities) classified National Security Information, Restricted Data or Formerly Restricted Data (herein after referred to as classified information).

2. For the purposes of this understanding "security interest" shall mean those security elements related to the protection of classified information. It specifically excludes security requirements under 10 CFR Parts 70 through 76 related to the protection of licensed nuclear materials from misuse, theft or diversion.

D. NRC AND DOE SECURITY RESPONSIBILITIES UNDER THIS MOU

1. NRC and DOE, when acting as contracting agencies, are responsible for performing the functions specified in the NISPOM for a CSA. NRC and DOE agree that the agency with the more significant (as mutually determined on a case by case basis) security interest will serve as the designated CSA for the facility in question. In such cases the designated CSA will provide security oversight to the contractor, including issuance of facility clearances and access authorizations and the conduct of periodic government reviews and audits. The designated facility CSA will forward, for processing to the non-CSA, contractor access authorization requests for personnel who are covered exclusively under the non-CSA security interest(s). The non-CSA will also be responsible for scheduling reinvestigations for contractor personnel covered exclusively under their security interest(s).

2. NRC and DOE agree that when the NRC authorizes possession of classified information under 10 CFR, Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," at an industrial facility that does not actually possess licensed nuclear material, e.g., a contractor of a licensee, the agency with the more significant (as mutually determined on a case by case basis) security interest will serve as the CSA for both agencies.

3. NRC and DOE agree that when NRC authorizes possession of classified information under 10 CFR Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data," at an industrial facility that does possess licensed nuclear material the agency with the more significant (as mutually determined on a case by case basis) security interest will serve as the CSA for both agencies, for that aspect of the program related to the protection of classified information. In such cases, NRC retains full regulatory authority to: (1) ensure the security of licensed nuclear materials from theft, diversion or misuse through its inspection; and (2) enforcement authorities under Title 10, "Energy," of the Code of Federal Regulations.

4. NRC and DOE agree that any addition, modification (including waivers or exceptions), or deletion of a security interest at a facility where a mutual security interest exists, will be coordinated with the other agency.

5. NRC and DOE agree that NRC will use DOE Foreign Ownership, Control and Influence (FOCI) investigative processing for facilities with mutual security interests. However, NRC reserves FOCI determination authority for licensee and certificate holder facilities.

6. NRC and DOE will continue to operate under the "DOE-NRC Working Agreement for Cooperation in Security Clearance Matters of September 13, 1989."

7. NRC and DOE agree that the designated CSA will invite the non-CSA to participate in any government reviews of the interests of the non-CSA interests. NRC and DOE further agree that it is the responsibility of the agency with the security interest to initiate and process any action against the contractor, licensee or certificate holder resulting from a failure to comply with security requirements of the agency with the security interest.

8. NRC and DOE agree to notify the other upon taking action to invalidate a facility security clearance of a contractor, licensee or certificate holder of mutual security interest.

9. NRC and DOE agree to provide copies, within 30 days of completed facility security surveys and government reviews conducted at facilities where one is the CSA and the other has a security interest.

10. The designated CSA agrees to notify the non-CSA of violations of security procedures and loss, compromise, or suspected compromise when the non-CSA's security interest or classified information is involved.

E. CONTACTS

1. The principal senior management contacts for this MOU will be the Director, Division of Security, Office of Administration, NRC and the Director, Office of Safeguards and Security, Office of Nonproliferation and National Security, DOE.

2. Identification of these contacts is not intended to restrict communication between NRC and DOE staff members on security and other day-to-day activities.

F. RESOURCE IMPLICATIONS

The NRC and DOE do not anticipate charging the other agency for security services rendered under this MOU. However, in the event reimbursement for security services is agreeable to both agencies, the details of the levels of support to be furnished by either DOE or NRC with respect to funding will be developed in an addendum to this MOU, subject to availability of funds. This MOU shall not be used to obligate or commit funds or as the basis for the

transfer of funds. NRC and DOE will provide each other mutual support in budget justifications to the Office of Management and Budget and hearings before the Congress with respect to programs on which NRC and DOE collaborate.

G. SEPARABILITY

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

H. AMENDMENT AND TERMINATION

This MOU may be amended by mutual written agreement between DOE and NRC. This MOU may be terminated by mutual written agreement of DOE and NRC, or by either party upon 30 days written notice to the other party.

I EFFECTIVE DATE

This MOU shall become effective upon the latter date of signature of the parties.

Raymond J. Brady 7/13/96

Raymond J. Brady, Director
Division of Security
Office of Administration
Nuclear Regulatory Commission

Edward J. McCallum, Director
Office of Safeguards and Security
Office of Nonproliferation and National Security
Department of Energy