

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, AND THE DEPARTMENT OF ENERGY, OFFICE OF CLEAN ENERGY DEMONSTRATIONS, ON THE ENVIRONMENTAL REVIEW RELATED TO THE ISSUANCE OF A SPECIAL NUCLEAR MATERIAL LICENSE TO TRISO-X LLC FOR USE AT A FUEL FABRICATION FACILITY IN OAK RIDGE, TENNESSEE

The U.S. Nuclear Regulatory Commission (NRC), and the Department of Energy (DOE) as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

I. Introduction

The NRC and DOE developed this MOU to establish DOE's cooperating agency relationship for the purpose of collaborating on the NRC's environmental review of an application submitted by TRISO-X LLC (TRISO-X) for a special nuclear material license for a fuel fabrication facility (FFF) to be located in Oak Ridge, Tennessee. This agreement is consistent with the National Environmental Policy Act of 1969 (NEPA) which supports collaboration amongst government agencies. This MOU is governed by all applicable statutes, regulations, and policy.

II. Purpose and Regulatory Background

Both the NRC and DOE have responsibilities under NEPA to conduct an environmental review in relation to their respective proposed actions. NRC is preparing an environmental impact statement (EIS) for the proposed NRC action. DOE has expressed interest in becoming a cooperating agency on the EIS; NRC would serve as the lead agency for the environmental review. DOE would also prepare a supplemental analysis for preconstruction activities (10 CFR 1021.314(c)). This MOU establishes a framework under which both the NRC and DOE can conduct environmental reviews.

The purposes of this MOU are:

- A. To designate the NRC as the lead agency in the EIS process.
- B. To designate the DOE as a cooperating agency in the EIS process.
- C. To provide a framework for cooperation and coordination between the NRC and the DOE that will aid in the successful completion of the EIS in a timely, efficient, and thorough manner.
- D. To describe the respective roles, responsibilities, and jurisdictional authority of DOE and NRC in the review process.

III. AUTHORITY

NRC enters into this MOU under the authorities described below:

- 1. NEPA (42 U.S.C. § 4321 et seq.);
- 2. Atomic Energy Act (42 U.S.C. § 2011 et seq.);
- 3. The NRC regulations implementing NEPA at 10 C.F.R. part 51; and
- 4. National Historic Preservation Act of 1966.

DOE enters into this MOU under the authority of Section 646 of the Department of Energy Organization Act (Public Law 95-91, as amended; 42 U.S.C. § 7256).

This MOU does not alter the authorities or independence of the NRC and DOE or their abilities to fulfill their responsibilities for environmental review pursuant to any applicable statutory provisions.

IV. Roles and Responsibilities

NRC. The NRC licenses special nuclear material in accordance with its regulations such that the manufacture of fuel utilizing such material will be in accordance with the common defense and security and will provide adequate protection to the health and safety of the public, and protection of the environment.

DOE. DOE has provided cost shared cooperative agreements through the Advanced Reactor Demonstration Program to help deliver clean energy demonstration projects at scale to accelerate deployment, market adoption, and the equitable transition to a decarbonized energy system.

A. NRC Responsibilities:

1. As Lead Agency, the NRC retains final responsibility for the content of the EIS. The NRC's responsibilities include identifying the purpose of and need for the TRISO-X FFF EIS; selecting alternatives for analysis; determining effects of the proposed alternatives; making recommendations on the proposed action; evaluating appropriate mitigation measures; and preparing the EIS. In meeting these responsibilities, the NRC will follow the guidance set forth in NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Final Report"; and all applicable statutory and regulatory requirements.
2. To the fullest extent possible, and consistent with its responsibility as lead agency, the NRC will consider DOE comments provided as a cooperating agency in preparation of the TRISO-X FFF EIS.
3. Upon request, the NRC will provide the DOE with copies of supporting documentation of the staff's evaluation relevant to the DOE's responsibilities as needed and requested by DOE.
4. The NRC staff will identify milestone dates in the standard EIS review schedule which they will share with DOE. Review timelines are listed in Attachment A to this MOU.

B. DOE Responsibilities:

1. The DOE is a Cooperating Agency for developing the EIS and will review draft versions of the EIS.
2. DOE comments as a cooperating agency will be provided in accordance with the time frames identified by the NRC staff in the standard EIS review schedule. Review timelines are listed in Attachment A to this MOU.

3. DOE will be responsible for writing and signing a separate Record of Decision for decisions, if any, that fall under DOE jurisdiction.

C. Responsibilities of DOE and NRC:

1. The Parties agree to comply with the review schedule. The NRC will set the EIS schedule and reserves the right to adjust it at its exclusive discretion.

2. The Parties agree to make reasonable efforts to resolve any procedural and substantive disagreement, and they acknowledge that the NRC retains final responsibility for the determinations identified in the EIS regarding the NRC licensing action.

3. Each Party agrees to fund its own expenses and costs associated with the EIS process.

V. Other Provisions

A. **Authorities Not Altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

B. **Financial Obligations.** This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU provides authorization or is intended to obligate the parties to expend, exchange, or reimburse funds, services or supplies, or transfer or receive anything of value, or enter into any contract assistance agreement, interagency agreement, or other obligation. Any activity conducted by Parties pursuant to this MOU is subject to the availability of funds.

C. **Conflict of Interest.** The Parties agree not to utilize any individual for purposes of environmental analysis including officials, employees, or third-party contractors, having a financial interest in the outcome of the EIS.

D. **Documenting Disagreement or Inconsistency.** As described in section IV above, the NRC staff will provide an opportunity for the DOE to review preliminary versions of the draft and final EIS. Where the NRC and the DOE disagree on significant elements of the EIS, and these disagreements cannot be resolved, the NRC will make the final decision regarding the content of the EIS, and the DOE may document its views and submit them as comments on the EIS to be incorporated in the final document as appropriate.

E. **Management of Information.** DOE acknowledges that all data and information provided will become part of the NRC's official record and will be available for public review, except that NRC may withhold information from the public that is exempt from disclosure under the Freedom of Information Act (FOIA) and other applicable statutory authorities. Subject to the FOIA, the DOE agrees that internal working draft documents for the development of the EIS will not be made available for review by individuals or entities other than the Parties to this MOU.

All confidential, proprietary, Controlled Unclassified Information, Sensitive Unclassified Non-Safeguards Information or other protected information under NRC regulations will be labeled according to requirements in 10 CFR § 2.390. The NRC and DOE shall ensure that shared data, including data concerning the precise location and nature of historic properties and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, including conformance to section 304 of the National Historic Preservation Act, as amended and section 9 of the Archaeological Resources Protection Act.

The NRC and DOE agree that in order to allow full and frank discussion of preliminary analysis and recommendations, meetings to review pre-decisional and deliberative documents will not be open to the public.

- F. **MOU Limitations.** This MOU establishes coordination purposes of the parties and is not legally enforceable nor shall it be construed to create any legal obligation nor to confer a binding or enforceable right of action on either party. This MOU shall not be construed to provide a private right of cause of action for or by any person or entity.
- G. **Retention of Rights.** Cooperating agency status for the EIS does not preclude the DOE from participating in the NEPA process according to the provisions in 10 CFR part 51.

VI. **Agency Representatives**

Each agency will designate a representative to ensure coordination between the DOE and the NRC during the planning process.

NRC Representatives:
Jill Caverly, Senior Project Manager
Jill.Caverly@nrc.gov
301-415-7674

DOE Representative:
Gretchen Applegate, NEPA Specialist
gretchen.applegate@hq.doe.gov
240-252-0399

VII. **Administration of the MOU**

- A. **Approval.** This MOU becomes effective upon signature by the authorized officials of each of the Parties.
- B. **Amendment.** This MOU may be appended or amended through written agreement of each Party.

- C. **Termination.** If not terminated earlier, this MOU will end when the final TRISO-X EIS is issued by the NRC. Any Party may end its participation in this MOU by providing written notice to the other Party.
- D. **Entirety of Agreement.** This MOU, including attachment A, represents the entire MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

VIII. Signatories

This agreement will take effect on the last date of signature.

Date:

Christopher Regan, Director
Division of Rulemaking, Environmental
and Financial Support
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission

Date:

Todd Shrader

Director of Project Management

Office of Clean Energy Demonstrations

U.S. Department of Energy

Attachment A

Schedule for Cooperating Agency Participation on the TRISO-X EIS

	Potential Activities of Cooperating Agency within its acknowledged areas of expertise	Schedule for Input to NRC
1	Participate in a conference call or meeting with NRC staff to discuss information needs and technical issues. Provide any specific information for use in the analysis.	Within 10 days of MOU finalization and as requested by NRC throughout the development of the EIS.
2	Provide comments on working drafts of the draft EIS.	Within 10 business days of receiving applicable sections of the working draft of the draft EIS for review.
3	Provide comments on working drafts of proposed responses to public comments on the draft EIS.	Within 10 business days of receiving draft compilation of comments and responses.
4	Provide comments on working drafts of the final EIS.	Within 10 business days of receiving applicable sections of the working draft of the final EIS for review.