

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF ENERGY, LOAN PROGRAMS OFFICE
AND
THE U.S. NUCLEAR REGULATORY COMMISSION
ON
NUCLEAR ENERGY PROJECTS UNDER REVIEW BY THE U.S. NUCLEAR REGULATORY
COMMISSION AND SEEKING FEDERAL FINANCIAL ASSISTANCE FROM THE LOAN
PROGRAMS OFFICE

This memorandum of understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy's (DOE) Loan Programs Office (LPO) (hereafter the "parties" or "party") describes the parties' roles, responsibilities, and coordination on Nuclear Energy Projects. As used in this MOU, the term "Nuclear Energy Projects" refers to nuclear power reactors, advanced nuclear reactors, fuel enrichment facilities, conversion and fabrication facilities, and fuel cycle manufacturing facilities that are anticipated to involve both an application to the DOE LPO for Federal financial assistance and an application to the NRC for a license or other approval(s). The purpose of this MOU is to establish a framework for coordination among the parties to support common goals in furthering each agency's responsibilities under the National Environmental Policy Act of 1969, as amended (NEPA), while also recognizing the need to assure the NRC's independence to avoid compromising its regulatory role. Specifically, this MOU is intended to provide a framework for the NRC and DOE LPO to efficiently coordinate their respective NEPA responsibilities while assuring that the NRC remains independent of activities involved in DOE LPO's review and selection of Nuclear Energy Projects that receive financial support from DOE LPO.

The NRC and DOE have previously entered into memoranda to support coordinated environmental review efforts, with the NRC serving as a lead agency and DOE serving as a cooperating agency for development of environmental impact statements (EISs) under NEPA for applications for which DOE has provided a cost share award. An example is the memorandum of agreement between NRC and DOE for the development of the EIS for construction and the Supplemental EIS for operation of the SHINE Medical Radioisotope Production Facility. Additionally, NRC and DOE recently executed Addendum No. 7 to the MOU on Nuclear Energy Innovation regarding the NEPA reviews of advanced reactors that were awarded cost shares from DOE (Carbon Free Power Project (CFPP), TerraPower Sodium Reactor, and X-Energy Xe-100).

The coordination and cooperation between the parties is intended to assure the NRC's independence to avoid compromising its regulatory role and to meet the respective responsibilities of each agency to cost-effectively implement NEPA requirements within the bounds of their own statutory authority.

I. AUTHORITY

This MOU does not alter the authority or independence of the parties or their abilities to fulfill their statutory responsibilities. This MOU coordinates each agency's responsibilities for environmental reviews pursuant to the Atomic Energy Act of 1954, as amended (AEA), NEPA, the Energy Reorganization Act of 1974, as amended (ERA 1974), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and other applicable statutory provisions.

A. NRC Authority:

The authorities of the NRC to enter into and engage in the activities described within this MOU include, but are not limited to:

1. NEPA (42 U.S.C. 4321 et seq.)
2. The AEA (42 U.S.C. 2011 et seq.)
3. The ERA 1974 (42 U.S.C. 5801 et seq.)
4. The NHPA
5. The ESA
6. NRC regulations at 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulation Functions."

B. DOE LPO Authority:

The authorities of the LPO to enter into and engage in the activities described within this MOU include, but are not limited to:

1. U.S. Department of Energy mandate under Title XVII of the Energy Policy Act of 2005, as amended (Act) (42 United States Code [U.S.C.] §§16511-16517)
2. U.S. Department of Energy mandate under the authority of Section 646 of the Organization Act (Public Law 95-91, as amended; 42 U.S.C. § 7256).
3. NEPA (42 U.S.C. 4321 et seq.)
4. DOE NEPA Implementing Procedures in Title 10 of the *Code of Federal Regulations* (CFR) Part 1021, "National Environmental Policy Act Implementing Procedures."

II. BACKGROUND AND PURPOSE

The NRC is responsible for licensing and regulating commercial nuclear power plants along with other civilian uses of nuclear materials. NRC licensing actions are subject to NEPA. As such, the NRC issues categorical exclusions, environmental assessments (EAs), and EISs for these actions, as appropriate.

DOE is responsible for promoting the safe and environmentally sound development of power in the U.S. LPO is responsible for processing loan guarantee applications pursuant to Title XVII of the Energy Policy Act of 2005. Loan guarantees issued under LPO's program are considered major Federal actions and are also subject to NEPA review.

The purpose of this MOU is to establish a framework for early coordination and participation among the parties to support common goals and timely reviews in furthering each agency's regulatory responsibilities as they relate to proposed Nuclear Energy Projects. Cooperation and coordination between the parties will promote efficiencies in the decision-making process of each party while assuring the independence of each agency. Both parties

anticipate that the NRC will be the lead agency under NEPA, and that LPO will be a cooperating agency under NEPA.

III. ROLES AND RESPONSIBILITIES

The NRC and the DOE LPO acknowledge their respective responsibilities for complying with the requirements of each agency's regulations as they pertain to the licensing or permitting (for the NRC) or Federal financial support (for DOE LPO) of Nuclear Energy Projects. Because the parties share a mutual interest in reducing delays and duplication in carrying out NEPA reviews, the parties have determined that this interest would be served by an MOU that establishes a framework for cooperating agency agreements for projects involving actions by both agencies. An individual letter should be issued to initiate an agreement for each project and further clarify roles and responsibilities. If any project is a FAST-41 project, then additional roles and responsibilities may need to be detailed for project coordination, communications, sharing of data, and schedule development and should be outlined in the initiation letter.

For the projects that fall under this MOU, the primary roles and responsibilities for the parties are:

A. NRC as the Lead Federal Agency under NEPA:

The NRC is the independent safety and security regulator for civilian uses of radioactive materials. The NRC is responsible for evaluating licensing applications and deciding whether to grant them. NEPA requires the designation of a lead Federal agency for the preparation of environmental documents. Other agencies that have an action on the same project may serve as cooperating agencies on the environmental documents. As the agency with the approval authority for the licensing of production and utilization facilities under Sections 103 and 104 of the AEA, the NRC shall:

- Serve as the lead agency for the NEPA review of projects under this MOU and preparation of the associated NEPA documents. The NRC will issue an NRC-specific finding of no significant impact or record of decision, as appropriate.
- Coordinate with DOE LPO on ways to reduce burden to participants that may result from multiple consultation efforts under Federal law (e.g., NHPA or ESA consultation) being conducted by each Federal agency for the same project.

B. DOE as a Cooperating Agency:

While the DOE will oversee and manage the LPO loan application process, the NRC has responsibility for issuing authorizations, permits, and licenses under its regulatory purview and, as such, will act as the lead Federal agency for the NEPA review and for licensing activities that are within the regulatory authority of the NRC. DOE LPO will cooperate with the NRC on the NEPA review and issue an LPO-specific finding of no significant impact or record of decision, as appropriate.

C. Project Coordination:

This MOU encourages early involvement among the NRC and the DOE LPO on Nuclear Energy Projects. The parties will share project-specific information during the NEPA review process and on potential environmental impacts. The NRC and DOE LPO may jointly participate in audits,

requests for information, information gathering and scoping, site visits, and meetings as part of the environmental review. Additionally, this MOU encourages early involvement among the NRC, DOE LPO, the public, Tribes, and other government agencies in support of the NEPA review process.

As the lead agency under NEPA, the NRC will be responsible for drafting sections of the NEPA documents (and requesting additional information as necessary) that are needed to support NRC licensing decisions. DOE LPO will be responsible for drafting sections of the NEPA documents (and requesting additional information as necessary) that specifically relate to DOE LPO activities or information needs that are not necessary to support NRC licensing decisions. In areas where both agencies may have involvement, if DOE LPO believes that additional analysis is needed, but the NRC does not agree that such analysis would be necessary under the regulatory procedures of the NRC, such analysis will be the responsibility of DOE LPO.

As the lead agency under NEPA, the NRC is responsible for determining the purpose of and need for the project for purposes of the NEPA documents and the NRC's licensing process. DOE LPO will provide NRC its purpose of and need for the project for purposes of the LPO's involvement in the project for inclusion in the NEPA documents. The parties should coordinate early regarding the scope of the NEPA analysis for all activities under each agency's authority and ensure that the purpose and need, the suite of alternatives, and the evaluation presented in the NEPA documents meet the needs of each agency. Coordination should include required consultations pursuant to the ESA, the NHPA, and other laws. The NRC and DOE LPO will complete independent decisions in carrying out their respective responsibilities.

DOE LPO and the NRC hereby agree to work with each other to ensure that timely decisions with respect to the preparation of the NEPA documents are made and that the responsibilities of each agency are met. Specifically, each agency agrees to the following list of responsibilities:

1. Communications: Each Party will provide the other with schedule information on projects under this MOU, including information on scheduling, milestones, and progress on environmental and other relevant program reviews. Periodic or regular conference calls and meetings will be held between the parties to exchange information as necessary and support the completion of the review process. Each party will participate in the development of letters and other types of communication methods for the project, as necessary (i.e., scoping, draft and final EA/EIS letters, etc.).
2. Proactive Participation: The parties will (1) identify the issues and concerns related to the projects covered under this MOU that need to be addressed in the project's NEPA documentation for each party to meet their respective obligations and (2) identify issues and concerns and attempt to resolve them while draft documentation is being developed.
3. Scheduling: In accordance with NEPA Section 107(a)(2)(D), the NRC will develop a schedule, in consultation with each cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action. Parties will coordinate on schedules for: (1) development and review of draft and final NEPA documents; (2) consultation; and (3) public and interagency meetings.
4. Sharing of Information: As appropriate, the parties will share the information gathered and relied upon by each of them to complete the NEPA review. The parties agree to cooperate in the preparation of requests for additional information, studies, or data to

avoid duplicative requests and to compile a consistent set of information on which the parties will rely. The parties will also cooperate in identifying and developing the information at the level of detail required to complete the environmental review.

5. Hearings: On request, each agency will participate in any public meetings or hearings held by the other agency related to the environmental review. Particularly in the case of the NRC adjudicatory hearings, DOE LPO may provide expert testimony, as needed, in those areas or sections covered in the NEPA documents in whose preparation DOE LPO participated and in those areas of special DOE expertise. DOE LPO's participation in the NRC adjudicatory hearing process will be consistent with all relevant laws and regulations and coordinated with appropriate representatives.

IV. Funding Authorization

This MOU is neither a fiscal nor a funds obligation document and does not authorize expenditure or reimbursement of appropriated funds.

V. Organizational Conflicts of Interest

The parties are aware of the organizational conflict of interest requirements and obligations of the respective agencies under those requirements, including Section 170A of the Atomic Energy Act of 1954, as amended. The parties will work together to resolve any organizational conflicts that may arise.

VI. Administration of the MOU

A. General: The NRC and DOE acknowledge that the MOU does not alter the authority and responsibilities of the parties under their respective jurisdictions.

1. This MOU is intended only to establish a strong working relationship between the parties in connection with efficient actions on applications for authorizations, permits, or licenses filed in connection with the above-mentioned projects and is not intended to, nor does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the U.S., its agencies, its officers, or any other person.
2. This MOU is to be construed in a manner consistent with all applicable laws and regulations.
3. Neither this MOU nor any individual provision of this MOU shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the U.S. with respect to matters specified herein, nor shall anything in the MOU be construed as modifying the existing authority of either agency.
4. The parties intend to carry out fully the terms of this MOU. All provisions in this MOU, however, are subject to the availability of resources and appropriated funds.
5. If the applicant or other person makes a request under the Data Quality Act for a correction of information, the agency that disseminated the information will be responsible for processing the request.

6. This MOU cannot be used to obligate or commit funds or as the basis for the transfer of funds.
7. Nothing in this MOU, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement.

B. Modification: Modifications to this MOU shall be made by mutual consent of the parties through the issuance of a written instrument signed and dated by both parties.

C. Termination: Either party, in writing, may terminate this MOU in whole or in part at any time before the date of expiration upon 30 days written notice to the other party. Either party may terminate application of this MOU to a specific project in whole or in part at any time before the date of expiration upon 30 days written notice to the other party. During any such 30-day waiting period, the parties will actively attempt to resolve any disagreement between them.

D. Dispute Resolution: While retaining ultimate responsibility for making determinations and exercising their individual responsibilities in accordance with existing statutory responsibilities, the parties will consult with one another to resolve disputes using existing dispute resolution methods. If no agreement can be reached, either agency may refer the matter to the Council on Environmental Quality in accordance with 40 CFR Part 1504, "Pre-decisional Referrals to the Council of Proposed Federal Actions Determined to Be Environmentally Unsatisfactory." Notwithstanding any such referral, the NRC reserves the right to make a final decision on any matter within the NRC's regulatory authority.

E. Entirety of Agreement: This MOU represents the entire MOU between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

ACCORDINGLY, the parties have signed this MOU on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

FOR THE US NUCLEAR REGULATORY COMMISSION:

Andrea Veil, Director
Office of Nuclear Reactor Regulation

Date

John Lubinski, Director
Office of Nuclear Material Safety and Safeguards

Date

ACCORDINGLY, the parties have signed this MOU on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

FOR THE US DEPARTMENT OF ENERGY:

Robert Marcum, Deputy Director
Loan Programs Office

Date

Michael Reed, Director, Technical and Environmental Division
Loan Programs Office

Date

Todd Stribley, Director, Environmental Compliance
Technical and Environmental Division, Loan Programs Office

Date