

MEMORANDUM OF UNDERSTANDING
**BETWEEN THE DEPARTMENT OF HOMELAND SECURITY/
FEDERAL EMERGENCY MANAGEMENT AGENCY
AND THE NUCLEAR REGULATORY COMMISSION**
**REGARDING RADIOLOGICAL EMERGENCY RESPONSE PLANNING
AND PREPAREDNESS**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish a framework for cooperation between the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) and the Nuclear Regulatory Commission (NRC) in radiological emergency response planning and preparedness matters in support of effective plans, emergency response, and preparedness measures at and in the vicinity of utilization facilities, as defined by section 109 of the NRC Authorization Act of 1980 (Pub. L. No. 96-295).¹

II. PARTIES

The parties to this MOU are DHS/FEMA and the NRC.

A. DHS/FEMA

1. MISSION

The mission of DHS/FEMA is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.²

2. SPECIFIC ACTIVITIES

In support of the primary mission of DHS/FEMA, the Technological Hazards Division (THD) within FEMA/Resilience:

- a. Ensures that state, local, and tribal governments can adequately protect the health and safety of the public in the vicinity of utilization facilities in the event of an incident at a utilization facility.
- b. Works with the NRC to review early site permit applications to determine whether any applicant-identified significant impediments to the development of

¹ <https://www.congress.gov/96/statute/STATUTE-94/STATUTE-94-Pg780.pdf>

² 6 U.S.C. § 313, "Federal Emergency Management Agency."

offsite³ emergency plans would be mitigated or eliminated by measures proposed by the applicant.

- c. Informs and educates the public about radiological emergency preparedness, response, and recovery.
- d. Supports and provides guidance to state, local, and tribal governments' emergency planning and preparedness activities that take place offsite.

B. THE NRC

1. MISSION

The mission of the NRC is to license and regulate the Nation's civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, promote common defense and security, and protect the environment.

2. SPECIFIC ACTIVITIES

In support of the mission of the NRC, the Division of Preparedness and Response (DPR) of the Office of Nuclear Security and Incident Response (NSIR):

- a. Performs licensing activities related to emergency preparedness for new and existing utilization facilities.
- b. Conducts actions related to policy development, including developing regulations and guidance.
- c. Oversees the agency inspection program for licensee emergency preparedness functions.
- d. Maintains readiness of the NRC Headquarters Operations Center for event response and administers a training program for NRC staff.

III. AUTHORITY

This MOU is authorized under the provisions of the Atomic Energy Act of 1954, as amended (Pub. L. No. 83-703); the Energy Reorganization Act of 1974, as amended (Pub. L. No. 93-438); Section 109 of the NRC Authorization Act of 1980 (Pub. L. No. 96-295); Sections 201(a), (b); 601, 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Pub. L. No. 93-288, as amended), 42 U.S.C. § 5131(a) and (b), 5195, 5196; 6 U.S.C. § 744; 6 U.S.C. § 3149(a); Executive Order 12127, as amended; Executive Order 12148, as amended; Executive Order 12657, as amended; Presidential Policy Directive-8: National Preparedness.

IV. SUPERSEDES

This MOU supersedes the MOU between FEMA and the NRC, dated December 15, 2015.

³ "Offsite" describes the area beyond the boundaries of the owner-controlled area around a utilization facility.

V. RESPONSIBILITIES UNDER THE MOU

A. DHS/FEMA Responsibilities

FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and is the lead Federal agency⁴ for assessing offsite radiological emergency response plans and preparedness. FEMA makes findings and determinations regarding the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC.

As the lead Federal agency for offsite emergency planning and preparedness activities, FEMA:

1. Makes findings and determinations as to whether offsite emergency plans are adequate⁵ and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment). FEMA findings and determinations on the status of emergency planning and preparedness around the NRC-regulated sites will be provided to the NRC for use in the NRC licensing process on a mutually agreeable schedule. Any finding provided under this arrangement constitutes an extension of FEMA's review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR Part 350. Findings are based on the review of currently available plans and joint exercise results related to a specific utilization facility. Details of how FEMA will make findings and determinations are found in FEMA policy and guidance.
2. Approves Alert and Notification System (ANS) design reports. When the ANS design report undergoes significant changes,⁶ including any changes to primary and backup alert methods, FEMA will allow the NRC to review the ANS design report to ensure that the NRC-regulated aspects of ANS are maintained.
3. Leads the development of radiological emergency preparedness-focused information and education programs, including those associated with Environmental Justice, such as tribal equity initiatives.⁷
4. Reviews initial license applications and supports the NRC licensing reviews related to utilization facilities regarding the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This includes submitting an evaluation suitable for inclusion in the NRC safety evaluation reports. To make a finding on emergency preparedness for initial license applications, FEMA reviews the pertinent information provided by the NRC, as submitted by the applicant. The resulting

⁴ The authorities that designate FEMA as "lead," are found in Executive Order 12148, Federal Emergency Management (July 20, 1979) (as amended). Pursuant to DHS Delegation 9000.1, the DHS Secretary delegated to the FEMA Administrator the authority to perform the functions assigned to the Secretary of Homeland Security in Executive Order 12148, as revoked in part, and amended by Section 1 of Executive Order 12673 and Section 52 of Executive Order 13286 of February 28, 2003, relating to FEMA.

⁵ FEMA authorities for making findings and determinations are identified in 44 CFR § 350.1 and 44 CFR § 350.3, in addition to the Radiological Emergency Preparedness Program Manual.

⁶ A "significant change" is defined in 44 CFR § 350.14 (b).

⁷ For the purposes of this MOU, the FEMA-NRC collaborative work on Environmental Justice involves the development, implementation, and maintenance of a program of public education and information to support state, tribal, and local radiological emergency plans and preparedness.

preparedness finding is based on the review of currently available plans and joint assessment activity results. This review includes assessing whether offsite plans meet the planning standards (44 CFR § 350.5) and NUREG-0654/FEMA-REP-1⁸ criteria and whether each assessment activity demonstrates reasonable assurance that the plans can be implemented. Routine support includes providing assessments, findings, and determinations (interim and final) on offsite plans and preparedness related to license application reviews for utilization facilities.

- a. A finding based only on the review of currently available offsite plans includes an assessment as to whether these plans are adequate when measured against the planning standards (44 CFR § 350.5) and evaluation criteria of NUREG-0654/FEMA-REP-1 and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding indicates one of the following conditions:
 - i. Plans are adequate, and there is reasonable assurance that they can be implemented with limited or no corrections.
 - ii. Plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans, or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
 - iii. Plans are inadequate and cannot be implemented until revised to correct inadequacies noted in the Federal review.
 - b. If FEMA determines the available plans are incomplete or otherwise not ready for review, then FEMA provides the NRC with a status report delineating milestones for preparation of the plan by the offsite authorities and FEMA's actions to assist in the development and review of the plans.
 - c. If FEMA determines under 44 CFR § 350.13 that previously approved offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public, FEMA will initiate withdrawal of plan approval in accordance with 44 CFR § 350.13.
5. Provides radiological emergency preparedness training as listed in 44 CFR § 351.20(i).
 6. Informs the NRC if a disaster significantly damages the area around an operating utilization facility and FEMA questions the continued adequacy of offsite emergency preparedness. FEMA coordinates Preliminary Capability Assessment (PCA) and Disaster Initiated Review (DIR) with the NRC and notifies the NRC of the schedule for conducting such activities. A DIR is not a comprehensive review of offsite plans and preparedness. Details on the coordination of PCA and DIR activities are described in the "FEMA Standard Operating Guide (SOG), Assessment of Offsite Emergency Preparedness Infrastructure and Capabilities Following an Incident in the

⁸ [Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants \(fema.gov\)](https://www.fema.gov).

Vicinity of a U.S. NRC Licensed-Nuclear Power Plant” and the NRC Inspection Manual, Manual Chapter 1601, “Communication and Coordination Protocol for Determining the Status of Offsite Emergency Preparedness.”

7. Makes expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, the NRC hearing boards and administrative law judges, and in any court actions, including related proceedings. FEMA appears in NRC licensing proceedings only when requested to do so by the Commission, the Atomic Safety and Licensing Board, or presiding officer, except that FEMA will appear in contested NRC licensing proceedings when requested by the NRC staff; FEMA only appears in NRC licensing proceedings as part of the presentation of the NRC staff. In contested NRC proceedings, and in accordance with the NRC’s regulations and at the discretion of the NRC presiding officer, FEMA counsel typically presents FEMA witnesses and is permitted to cross-examine the witnesses of parties other than the NRC witnesses on matters involving FEMA findings and determinations, policies, or operations as provided in 10 CFR Part 2 or by order of the presiding officer; however, the NRC staff will not ask FEMA to testify on status reports. The specific assignment of professional responsibilities between the NRC and FEMA counsel is primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences is to be made by the Chief Counsel of FEMA and the General Counsel of the NRC or their designees. The NRC requests the presiding officer to place FEMA on the service list for all litigation in which it is expected to participate.
8. Notifies the NRC upon receiving a licensee’s request for Federal facilities and resources when a decline or fail situation exists (44 CFR § 352.4). FEMA consults with affected Federal agencies to determine the need for and commitment of Federal facilities and resources, consistent with Executive Order 12657, as amended. During this consultation process, FEMA cooperates with affected agencies, including the NRC, to review the licensee’s needs, the Federal resources available, the conditions under which any assistance is provided, and the options for obtaining reimbursement.
9. Coordinates the discontinuation of FEMA Radiological Emergency Preparedness (REP) Program Services when the NRC notifies FEMA that FEMA REP Program Services affecting offsite radiological emergency planning and preparedness are no longer required at a utilization facility to support the NRC’s reasonable assurance determination. FEMA requires notification of the effective date from the NRC to close out REP Program services. FEMA makes necessary notifications to state, local, and tribal entities.

B. The NRC Responsibilities

The NRC has the statutory authority for assessing and approving the adequacy of emergency preparedness plans for the Nation’s civilian utilization facilities, as discussed

in Section III. FEMA supports the NRC in this assessment by providing findings and determinations regarding offsite emergency preparedness to the NRC. This delineation of responsibilities avoids duplicative efforts in preparedness matters.

The NRC reviews FEMA's findings and determinations in conjunction with the NRC's assessment of onsite planning and response findings to determine the overall state of emergency preparedness for utilization facilities. The NRC uses the overall findings and determinations to make radiological health and safety decisions in issuing licenses and the continued operation of utilization facilities.

To carry out its regulatory functions in the review and assessment of emergency plans, the NRC:

1. Assesses license applicant emergency plan submittals to determine whether there is reasonable assurance that adequate protective measures can and will be taken during a radiological emergency in accordance with applicable NRC regulations and evaluates licensee emergency plans to ensure they continue to meet applicable NRC regulations. The submittals include information pertaining to offsite organizations with which licensees or applicants have written agreements to provide emergency onsite support services.
2. Verifies that licensee emergency plans are effectively implemented and maintained in a ready state (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. Reviews FEMA's findings and determinations of offsite plans to determine that the plans, including ANS design reports, are adequate and can be effectively implemented.
4. Makes radiological health and safety decisions on licensing, oversight, and enforcement actions such as initial licensing and issuance of notices of violations, civil penalties, and orders, including those shutting down operating reactors or other utilization facilities.
5. Identifies proposed utilization facilities that require emergency plans and transmits a request for review to FEMA. The NRC will meet with FEMA to discuss applications for advanced reactor designs, small modular reactors, and other nuclear technologies.
6. Reviews FEMA's findings and determinations upon receiving notification of FEMA's withdrawal of reasonable assurance⁹ and formally documents the NRC's position.¹⁰ When, as described in 10 CFR § 50.54(s)(2)(ii) and (s)(3), the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate

⁹ See Sections V.A.1 and 4 of this MOU regarding the FEMA's findings and the process for withdrawing approval of an emergency plan and reasonable assurance.

¹⁰ The NRC/NSIR/DPR Office Instruction DPR-200, "NRC Actions Subsequent to a Finding from FEMA" (Agencywide Documents Access and Management System Accession No. ML22228A210) describes the NRC's response in the event FEMA withdraws its reasonable assurance finding.

- protective measures can and will be taken in the event of a radiological emergency, the NRC will notify the affected licensee accordingly and start the “120-day clock.”¹¹
7. Reviews FEMA’s educational materials concerning radiological hazards and actions the public should take in the event of a nuclear or radiological emergency or incident at a utilization facility.
 8. Informs FEMA of any information the NRC receives from licensees, inspectors, or others that the NRC determines raises questions about the continued adequacy of offsite emergency preparedness.
 9. Considers information provided by FEMA Headquarters on FEMA's PCA and DIR process to inform the NRC’s determination of reasonable assurance that adequate protective measures can and will be taken during a radiological emergency at an operating nuclear power reactor or other utilization facility. The NRC must notify FEMA Headquarters, in writing, of the schedule for restart of an affected utilization facility and keep FEMA Headquarters informed of any changes in that schedule.
 10. Coordinates the discontinuation of FEMA REP Program Services consistent with decommissioning utilization facilities. As the information becomes available, the NRC informs FEMA of the facility undergoing decommissioning, along with the schedule for closure and the NRC-approved date for when FEMA REP Program Services are no longer needed.

C. Both DHS/FEMA and the NRC will:

1. Evaluate exercises that include or simulate cooperation and coordination between the agencies to determine if the licensees and offsite response organizations are reasonably prepared for an emergency. Exercise evaluation requires the following of both agencies, at a minimum:
 - a. Work collaboratively with licensees, tribal governments, and offsite response organizations, as applicable, when developing extent-of-play criteria for evaluated exercises and other performance-based activities.
 - b. Observe and evaluate exercises by implementing the National Preparedness System,¹² regulations, and programmatic guidance to the extent practicable.
 - c. Adequately address and integrate onsite and offsite considerations in a manner that provides a technically sound exercise upon which an assessment of preparedness capabilities is based.
2. Provide an opportunity for the other agency to review and comment on guidance, including interpretations of agreed-upon joint guidance and relevant research and

¹¹ Under 10 CFR § 50.54(s)(2)(ii), the Commission will determine whether the nuclear power reactor will be shut down or other enforcement action is appropriate if such conditions are not corrected within four months. The NRC is not limited by this provision because, as stated in 10 CFR § 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph."

¹² <https://www.fema.gov/emergency-managers/national-preparedness/system>

development programs, prior to adoption as formal agency guidance and implementation.

3. Continue to use the guidance set forth in “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG-0654/FEMA-REP-1)” as an acceptable method of meeting regulatory requirements.¹³
4. Provide opportunities for staff exchanges between both agencies to allow training and exposure to each organization’s mission and execution of statutory authorities.
5. Participate in the FEMA/NRC Steering Committee on Emergency Preparedness.
 - a. The Steering Committee establishes the day-to-day procedures for carrying out the arrangements of this MOU. The FEMA/NRC Steering Committee Charter¹⁴ contains the details of this arrangement.
 - b. The Steering Committee leads the coordination of emergency planning and preparedness and consists of an equal number of members from each agency. On voting matters, each agency will have one vote. If the Steering Committee cannot resolve an issue, then the issue is referred to FEMA and NRC management.
6. Maintain close communication between their respective Public Affairs/External Affairs offices to maintain awareness of each agency's external communications.
7. Adhere to the preparedness, response, and recovery roles and responsibilities outlined in the National Preparedness System, National Planning Frameworks, and the Nuclear/Radiological Incident Annex to the National Response and Recovery Federal Interagency Operational Plans.¹⁵

VI. POINTS OF CONTACT

A. DHS/FEMA

Director
Technological Hazards Division
Resilience/National Preparedness Directorate
Office of National Exercises and
Technological Hazards
Federal Emergency Management Agency
400 C Street SW
Washington, DC 20024

B. The NRC

Director
Division of Preparedness and Response
Office of Nuclear Security and Incident
Response Nuclear Regulatory
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Rockville, MD 20852

¹³ See U.S. NRC Regulatory Guide 1.101, “Emergency Planning and Preparedness for Nuclear Power Reactors,” Revision 2 (Agencywide Documents Access and Management System Accession No. ML13038A097).

¹⁴ The Steering Committee Charter is updated and approved by the Points of Contact of this MOU and made available in a Knowledge Management system mutually agreed on by the Steering Committee

¹⁵ [National Preparedness System](#) | [FEMA.gov](#)

VII. OTHER PROVISIONS

1. Nothing in this MOU is intended to conflict with current law or regulations or the directives of DHS/FEMA or the NRC. If a term in this MOU is determined to be inconsistent with any such authority and thereby deemed invalid, the remaining terms of this MOU will remain in full force and effect.
2. Nothing in this MOU is intended to restrict either party's authority to act according to statute or regulation.
3. Both DHS/FEMA and the NRC will treat any information shared under this MOU in compliance with the Privacy Act and, to the extent required and allowable, the Freedom of Information Act and any other applicable statute, Executive Order, or regulation.
4. This MOU is between DHS/FEMA and the NRC and does not confer or create any right, benefit, or trust responsibility, substantive, or procedural, enforceable at law or equity, by any third person or party (public or private) against the United States, its agencies, its officers, or any person; or against the NRC, its officers or employees or any other person.
5. The parties are to use or display each other's name, emblem, or trademarks only in the case of particular projects and only with the prior written consent of the other party. The DHS seal is protected by 18 U.S.C. § 506, 701, and 1017, among other laws, and the DHS Office of Public Affairs controls the use of the seal through DHS Management Directive No. 0030 (MD 0030). The NRC seal is protected by 18 U.S.C. § 506, 701, and 1017 and 10 CFR § 1.53, among other laws and regulations, and use of the seal is controlled by the Secretary of the Commission pursuant to 10 CFR § 1.25(k) and 1.51(c).
6. This MOU, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, expressed or implied, is admissible to contradict the provisions of this MOU.
7. This MOU is not a fiscal or funds obligation document. Any funds, services, or equipment provided to accomplish the goals anticipated under this agreement are done without expectation of reimbursement or the payment of fees related to such services, equipment, or personnel unless otherwise agreed. Any specific work or activity that involves the transfer of funds, services, or property among the parties requires the execution of a separate agreement and is contingent upon the availability of appropriated funds. Such activities are independently authorized by appropriate statutory or other authority. This MOU does not provide such authority.
8. The parties to this MOU agree to be responsible for the negligent or wrongful acts or omissions of their respective employees arising under this MOU. The parties agree -- subject to any limitations imposed by law, rule, or regulation -- to cooperate in good faith to resolve any claims promptly and, whenever appropriate, without litigation. For all claims or suits arising under this MOU, each party's designated legal representatives will, within seven (7) calendar days of receipt, provide the other's

designated legal representatives copies of any documents memorializing such claims. Nothing in this MOU will be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by Federal employees within the scope of their employment.

9. This MOU is supplemented by the implementation guidance developed and agreed upon by the FEMA/NRC Steering Committee and documented in a mutually accessible electronic system.
10. When referenced documents are revised or superseded, an immediate update of this MOU is not required. It will be updated at the next convenient opportunity. In the interim, the FEMA/NRC Steering Committee provides the necessary oversight.

VIII. EFFECTIVE DATE

The terms of this MOU become effective upon the signature of both parties.

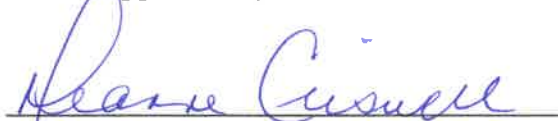
IX. MODIFICATION

This MOU is modified upon the mutual, written consent of the parties.

X. TERMINATION

The terms of this MOU, as modified with the consent of both parties, remain in effect until terminated. The MOU may be extended by mutual written agreement of the parties. Either party, upon 60 days written notice to the other party, may terminate this MOU.

XI. Approved by



Deanne Criswell, Administrator
Federal Emergency Management Agency

7-1-2024

Date



Ray V. Furstenau, Acting Executive
Director for Operations
U.S. Nuclear Regulatory Commission

July 1, 2024

Date