

October 29, 1999

FOR: The Commissioners

FROM: William D. Travers /s/ Executive Director for Operations

SUBJECT: NUCLEAR REGULATORY COMMISSION MEMORANDUM OF UNDERSTANDING WITH THE FEDERAL BUREAU OF INVESTIGATION

PURPOSE:

To inform the Commission of the continuing adequacy of the existing Memorandum of Understanding between the Nuclear Regulatory Commission (NRC) and the Federal Bureau of Investigation (FBI **EXIT**).

DISCUSSION:

The Communicated Threat Credibility Assessment Team (CAT) was jointly developed and funded by NRC and the Department of Energy (DOE **EXIT**) to support the FBI, as well as NRC and DOE senior decision makers, during the response to a nuclear-related threat. In light of the elimination of NRC funding support for the CAT, which was discussed in SECY-98-129, NRC staff reviewed, with input from the FBI, the existing Memorandum of Understanding (MOU) with the FBI ([attachment 1](#)) to determine if any modifications were warranted. The MOU delineates the responsibilities of each agency when nuclear threat incidents involving NRC-licensed facilities, materials, or activities occur. In addition to determining the impact of NRC's withdrawal from the CAT, staff also evaluated whether the MOU should be modified to address expanded FBI investigative jurisdiction, which now includes the malevolent use of byproduct materials. Comments were solicited from NRC staff and the FBI. Staff provided a number of comments ([attachment 2](#)) that were evaluated to determine whether modifying the current MOU is warranted. The FBI and the NRC staffs concluded that no revision to the MOU is necessary and that it remains an adequate basis for interagency coordination and cooperation.

Comments regarding response to nuclear threat incidents involving Agreement States and the importance of controlling the release of incident information should be addressed in more detail in the NRC/FBI Concept of Operations Plan (CONPLAN) currently being developed by the NRC staff in coordination with the FBI.

Coordination:

The Office of General Counsel has no legal objection.

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Attachments: 1. NRC/FBI MOU
 2. Comments on Current MOU

ATTACHMENT 2

COMMENTS ON MOU AND EVALUATION

Comment on MOU (originator)		Evaluation
1.	Revise MOU to be consistent with current revision of Title 18...Section 831... (IMNS)	While Title 18, Section 831, was revised, the current MOU already identifies Title 18, Section 831, as an FBI authority which would include the revision. No change affects the scope of the NRC/FBI agreement. Revision not warranted.
2.	FBI's definitions for nuclear material and nuclear byproduct material are different and should be included (IMNS)	The existing MOU doesn't define various nuclear materials or byproduct material. It is not clear that including these specific definitions, particularly when they are not identical though comparable, would improve the MOU. Revision not warranted.

3.	<ul style="list-style-type: none"> • Agreement states should be addressed in the MOU (IMNS) • MOU should address response involving Agreement states, including notifications. (OSP) 	The level of detail required to address issues associated with Agreement States will be provided in the CONPLAN currently being developed. Revision not warranted.
4.	Threats & attacks against people should be included in the definition of "nuclear threat incident" (IMNS)	Section 831 indicates that it is illegal to use nuclear or byproduct material to cause death or bodily harm to any person. Any potential threat or attack against a person would involve also NRC-licensed materials, facilities, or activities, which are explicitly covered already. Revision not warranted.
5.	In addition of coordinating press releases, MOU should recognize other public releases, e.g., Internet. (IMNS)	The existing MOU indicates that both agencies will "handle all threat incident information with adequate security and confidentiality..." Revision not warranted.
6.	Initial notification of NRC should be through NRC's HQ Ops Center (IMNS)	The FBI has been made aware of the option to contact NRC staff via the HQ Ops Center 24 hours a day. However, depending on the sensitivity of the information, FBI (HQ) has sometimes elected to communicate directly with NRC threat assessment staff. Procedures exist within the NRC to involve HQ Ops Center staff in a timely manner. Revision not warranted.
7.	MOU should include a protocol on interagency communications, e.g., recording of phone conversations. (IMNS)	This issue has been addressed in Information Assessment Team procedures. Revision not warranted.
8.	MOU should specify which agency notifies DOE and requests assistance. (IMNS)	Existing interagency plans (FRP, including Terrorism Annex, FRERP, CONPLAN) have established the mechanism and channels of communication for requesting assistance and support among various agencies. Identifying one other agency in the MOU that will provide assistance and support would probably require that all Federal agencies playing a similar role be identified. It is not the intent of the MOU to provide an exhaustive discussion of response options. Revision not warranted.
9.	Need to refer to CONPLAN in MOU. (OSP)	In the MOU both agencies are assigned the responsibility for contingency response planning. The CONPLAN, currently being developed, should be considered staff efforts to fulfill this responsibility, but does not have to be specified in the MOU. Revision not warranted.
10.	The term "Appropriate agencies," used in the MOU should list the agencies, or add "as required by NRC response procedures."	