

MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION
AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

I. Purpose and Background

1. The purpose of this Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) is to delineate the general areas of responsibility of each agency, to describe generally the efforts of the agencies to achieve worker protection at facilities licensed by the NRC, and to provide guidelines for coordination of activities between the two agencies regarding occupational safety and health.

2. Both NRC and OSHA have authority over occupational safety and health at NRC-licensed facilities. Because it is not always practical to identify boundaries between the nuclear and radiological safety that NRC regulates and industrial safety and health that OSHA regulates, a coordinated interagency effort can ensure against gaps in worker protection and, at the same time, avoid duplication of effort and regulation.

3. On October 21, 1988, NRC and OSHA signed an original MOU on worker protection at facilities licensed by the NRC. This MOU revokes and replaces the original MOU. This MOU also renews the commitment of each agency to continue effective collaboration in coordinating interagency efforts to achieve worker protection at facilities licensed by the NRC.

II. Hazards Associated with Nuclear Facilities

1. There are four main types of occupational hazards that may be associated with NRC-licensed facilities:

- a. Radiation hazards produced by radioactive materials;
- b. Chemical hazards produced by radioactive materials;
- c. Facility conditions that affect the safety of radioactive materials and thus present an increased radiation risk to workers. For example, these conditions might produce a fire or an explosion and, thereby, cause a release of radioactive materials or an unsafe condition; and
- d. Facility conditions that result in occupational hazards that do not involve the use of licensed radioactive materials (hereafter referred to as industrial safety and health hazards). Industrial safety and health hazards may include employee exposure to toxic nonradioactive materials such as beryllium and hazards such as electrical, fall, confined space, and equipment energization hazards.

2. Generally, NRC has authority and responsibility for the first three hazards listed in paragraphs 1(a), 1(b), and 1(c), while OSHA has authority and responsibility for the hazards described in paragraph 1(d). NRC and OSHA responsibilities and actions are described more fully below.

III. NRC Responsibilities

1. Consistent with its statutory authority under the Atomic Energy Act of 1954, as amended, and consistent with the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, the Nuclear Nonproliferation Act of 1978, and the Energy Policy Act of 2005 among other relevant statutes, the NRC is responsible for licensing and regulating the nation's civilian use of byproduct, source and special nuclear materials in order to assure the adequate protection of the public health and safety, promote the common defense and security, and to protect the environment.
2. The NRC has broad statutory authority to protect against radiation hazards produced by radioactive materials, chemical hazards produced by radioactive materials, and facility conditions that affect the safety of radioactive materials and thus present an increased radiation risk to workers and the general public.
3. The NRC implements its statutory authority through rulemaking and issuing orders to its licensees, issuing licenses and permits, and by conducting inspections and taking enforcement action as needed to ensure licensee compliance with enforceable standards and license and regulatory requirements.
4. The NRC does not have statutory authority to protect against industrial safety and health hazards that do not involve the use or consequences of licensed radioactive materials.

IV. OSHA Responsibilities

1. OSHA is responsible for administering the requirements established under the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*). OSHA's authority to engage in the kinds of activities described below does not apply to those working conditions for which other Federal agencies (such as NRC) and State agencies exercise statutory authority to prescribe and enforce standards, rules, or regulations affecting occupational safety or health (29 U.S.C. 653(b)(1); Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021)).
2. Under the OSH Act, every employer has a general duty to furnish each employee with employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations (29 U.S.C. 654(a) and 666). In order to minimize workplace hazards, NRC licensees are required to comply with OSHA's standards and regulations.¹
3. OSHA standards contain requirements designed to protect employees against workplace hazards. In general, safety standards are intended to protect against traumatic injury. Health standards are designed to address potential overexposure to toxic substances and harmful physical agents, and to protect employees against illnesses and disorders, including those that may not manifest until years after exposure.

¹With the exception of certain standards applicable to the control of specific radioactive materials such as licensed radioactive sources and byproduct materials (42 U.S.C. 2014 and 2021).

4. OSHA has authority to regulate employee exposures from all radiation sources not regulated by the NRC. Examples of these radiation sources include x-ray equipment, some accelerators,² incidental accelerator-produced radioactive materials,³ electron microscopes, betatrons, ion implanters, experimental particle physics research colliders (only when used to probe the fundamental properties of nature), and naturally occurring radioactive materials.⁴

5. Federal OSHA has enforcement authority over all workplaces and working conditions within its authority. Section 18 of the OSH Act provides that States may assume responsibility for the adoption and enforcement of occupational safety and health standards within their respective States only under a State Plan that is approved and monitored by Federal OSHA (29 U.S.C. 667). State Plan occupational safety and health standards must be at least as effective in providing safe and healthful employment and places of employment as Federal OSHA standards. OSHA State Plan States are expected to assert enforcement authority for occupational safety and health at NRC-licensed facilities in the same manner and to the same extent as Federal OSHA.

6. The OSHA areas of responsibility described in this MOU are subject to all applicable requirements and authorities of the OSH Act.

V. Interface Procedures

1. In recognition of the agencies' authorities and responsibilities enumerated above, the NRC and OSHA will follow the procedures below:

a. NRC does not conduct industrial safety and health inspections at NRC-licensed facilities. However, in the course of inspections of radiological and nuclear safety at such facilities, NRC inspectors may observe industrial safety and health hazards or receive complaints from employees that are within OSHA's authority and responsibility. In such instances, the NRC will bring the matter to the attention of licensee management. In the case of employee complaints, NRC will withhold the identity of the employee from the licensee. If the licensee does not control serious industrial safety or

²Accelerators that are operated to produce only particle beams and not radioactive materials (e.g., linear accelerators used for medical treatment, electron microscopes, ion implanters).

³Incidental accelerator-produced materials are those generated by particle accelerators that emit only particle beams and not radioactive materials. The Energy Policy Act of 2005 (EP Act) expanded the definition of "byproduct material" that NRC is authorized to regulate to include, among other materials, any material that has been made radioactive by use of a particle accelerator (i.e., accelerator-produced radioactive materials) and is produced, extracted, or converted after extraction for a commercial, medical, or research activity (42 U.S.C. 2011 *et seq.*; 10 CFR 20.1003). On October 1, 2007, NRC issued regulations implementing the new authority granted it over accelerator-produced radioactive materials. (72 FR 55864).

⁴The EP Act expanded the definition of "byproduct material" that NRC is authorized to regulate to include, among other materials, any discrete source of naturally occurring radioactive material that has been determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, and is extracted or converted after extraction for use in a commercial, medical, or research activity. (42 U.S.C. 2011 *et seq.*) On October 1, 2007, NRC issued regulations implementing the expanded authority granted it over byproduct material (72 FR 55864).

health hazards that are identified, the NRC regional office will inform the nearest OSHA regional office.⁵

b. In a State having an OSHA-approved State Plan, the OSHA regional office will refer the matter to the State for appropriate action.

c. OSHA regional offices will inform the appropriate NRC regional office of matters that are within the purview of NRC, when these come to their attention during Federal or State Plan safety and health inspections or through employee complaints. The following are examples of matters that OSHA would report to NRC:

i. Lax security control or work practices that would affect nuclear or radiological health and safety;

ii. Improper posting of radiation areas; and

iii. Licensee employee allegations of NRC license or regulation violations.

d. OSHA regional offices will inform the appropriate NRC regional office of any plans to conduct industrial safety and health inspections at major NRC-licensed facilities such as power reactors and fuel cycle facilities.⁶ Also, OSHA regional offices will discuss with the appropriate NRC regional office any industrial safety and health findings identified at such facilities that may be related to system, structure, or component design when such design may relate to compliance with NRC requirements.

2. NRC and OSHA generally do not conduct coordinated or joint inspections at NRC-licensed facilities. However, NRC-OSHA inspections may be conducted jointly by personnel from both agencies whenever resources are available and it is likely, based on experience in inspecting similar workplaces, that both radioactive material hazards and industrial safety and health hazards exist at a particular facility. Additionally, under certain conditions, such as investigations or inspections following certain accidents or those resulting from reported activities as discussed above, the NRC and OSHA may mutually agree, on a case-by-case basis, that coordinated or joint inspections may be in the public interest. Under such conditions, the NRC and OSHA will support each other in conducting those joint investigations.

3. Based upon reports of injuries, fatalities, or complaints at NRC-licensed facilities, OSHA will provide NRC with information on those facilities where increased management attention to worker safety and health is needed. NRC will bring such information, which can indicate a significant breakdown in worker safety, to the attention of licensee management. This will not interfere with OSHA authority and responsibility to investigate industrial accidents and worker complaints.

⁵Under Section 17(k) of the OSH Act, a “serious” violation exists where there is a substantial probability that death or serious physical harm could result if an accident or exposure to a toxic substance or harmful physical agent occurred (29 U.S.C. 666(j)).

⁶Section 17(f) of the OSH Act (29 U.S.C. 666(f)) and OSHA regulations (29 CFR §1903.6) contain a general prohibition against giving advance notice to employers of inspections, except as authorized by the Secretary of Labor or the Secretary’s designee.

4. NRC inspectors and other personnel inspect NRC-licensed facilities. In order to enhance the ability of NRC personnel to identify safety matters under OSHA's purview during nuclear and radiological safety inspections, OSHA may provide designated NRC personnel with basic chemical and industrial safety information and training on OSHA safety and health standards, consistent with ongoing OSHA training programs and available resources. To enhance the ability of OSHA and State Plan personnel to effectively participate in joint NRC-OSHA inspections, the NRC may provide training in basic radiation safety and health requirements, consistent with ongoing NRC training programs and available resources, to designated OSHA and State Plan personnel. The NRC Technical Training Center and the OSHA Training Institute will mutually agree upon details of such training.

5. The NRC's Executive Director for Operations (or designee), and the Assistant Secretary for OSHA (or designee) will coordinate resolution of policy issues concerning agency authority and operational relations.

6. NRC and OSHA should discuss and resolve issues of potential regulatory conflict at the lowest practical level. Should such discussions fail to provide a mutually agreeable outcome, each agency should make all reasonable efforts to resolve issues at the next higher level of authority.

7. Resolution of issues concerning inspection and enforcement activities involving both the NRC and OSHA authority at NRC-licensed facilities will be addressed by the NRC Director of the Office of Enforcement and the OSHA Director of the Directorate of Enforcement Programs, who will consult, as appropriate, with the OSHA Director of the Directorate of Cooperative and State Programs, and any other program office as necessary. Each NRC and OSHA regional office will designate points of contact for carrying out interface activities.

8. Agency liaisons at regional and headquarters levels should pursue routine outreach activities with their counterparts at mutually agreed upon intervals, but this should occur at least every two years.

VI. Commencement, Modification, and Termination

1. This MOU is effective upon the signature of both parties.

2. Any additions, deletions, or other changes to this MOU shall be by written modification agreed upon by the appropriate official for each party. Either party may initiate such modifications.

3. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes, or is intended to obligate, either agency 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 financial obligation.

4. The duration of the MOU shall be indefinite. Either party, however, may terminate its participation in this agreement upon 30 days prior written notice to the other party. After such notice, the parties shall meet at a mutually agreed upon location and date to effect an orderly termination of any ongoing or planned activities under this MOU.

5. Nothing in this agreement shall be interpreted as limiting, superseding or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

6. This agreement will be executed in full compliance with all applicable statutes and regulations, including the Privacy Act of 1974, the Freedom of Information Act, and the Federal Records Act.

7. This MOU is strictly for NRC and OSHA internal management purposes. This MOU is not legally enforceable and shall not be construed to create any legal obligation on the part of either the NRC or OSHA. In addition, this MOU shall not be construed to provide a private right of action for or by any person or entity.

VII. Separability

1. If any provision of this MOU, or the application of any provision 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.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

R. William Borchardt
Executive Director for Operations
July 19, 2013

FOR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

/RA/

David Michaels, PhD, MPH
Assistant Secretary
September 6, 2013

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David Michaels, PhD, MPH
Assistant Secretary

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