

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NUCLEAR REGULATORY COMMISSION
AND
THE DEPARTMENT OF HOMELAND SECURITY
REGARDING
CONSULTATION CONCERNING POTENTIAL VULNERABILITIES
OF THE LOCATION OF PROPOSED NEW UTILIZATION FACILITIES**

I. Purpose

This Memorandum of Understanding (MOU) establishes a process to implement the provisions of Section 657 of the Energy Policy Act of 2005 (EPA), Pub. L. 109-58, 119 Stat. 594, 814 (2005). Section 657 states:

SEC. 657. DEPARTMENT OF HOMELAND SECURITY CONSULTATION.
Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

II. Background

Nuclear Regulatory Commission

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, the NRC is responsible for licensing and regulating the construction and operation of commercial nuclear power plants (known as "utilization facilities") in the United States to protect the health and safety of the public and to promote the common defense and security. In conducting its review of applications for such facilities pursuant to the Commission's implementing regulations in 10 C.F.R. Parts 50 and 52, the NRC must, among other matters, determine the suitability of the site for the proposed facility.

Among the provisions pertaining to the determination of site suitability, issues associated with the common defense and security are, as a general matter, addressed through the requirements of 10 C.F.R. §100.21(f). This provision requires applicants to demonstrate that the site characteristics of the proposed location are such "that adequate security plans and measures can be developed." In conducting its technical review of this portion of the application, the NRC addresses potential vulnerabilities of the location of the proposed facility to terrorist attack; this evaluation focuses on assessing the impact of the following factors: (1) pedestrian and vehicular land approaches, (2) railroad approaches, (3) waterborne approaches, (4) potential "high-ground" adversary advantage areas, (5) nearby road and/or transportation routes, and (6) nearby hazardous materials facilities, airports, dams, military and chemical facilities, and pipelines.

Commencing in FY07, a substantial number of applications for new nuclear power plants is expected.

Department of Homeland Security

The Department of Homeland Security (DHS), pursuant to the Homeland Security Act (HSA) of 2002, Pub. L. 107-296, 116 Stat. 2135; Homeland Security Presidential Directive 7 (HSPD-7); and the National Infrastructure Protection Plan (NIPP) of 2006, has the authority and responsibility to lead the unified national effort to secure America by preventing, deterring, and responding to terrorist attacks and other threats and hazards to the Nation, including protecting the Nation's critical infrastructure (CI) and key resources (KR), such as the subject "utilization facilities."

III. Consultation Roles and Responsibilities

The NRC will "consult" with the DHS under Section 657 of the EPA as follows:

Before issuing a license for a utilization facility, the NRC will request, and the DHS will review and provide to the NRC comment on the potential vulnerabilities of the location of the proposed facility to terrorist attack. This review and comment will be based on information, including the application, provided by the NRC, and any other factors, consistent with DHS authorities, the DHS considers vital to assessing the potential vulnerabilities of the location of the proposed facility to terrorist attack.

Within ten (10) days after acceptance and docketing of an application, the NRC will provide the DHS with the application and any other information it deems relevant. The NRC will communicate promptly any schedule delay.

Within 90 days of receipt of the application materials, the DHS will respond to the NRC in writing. This response will include any and all DHS comments concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack. If within 60 days of receipt of the application materials the DHS anticipates that it cannot complete its review within the 90-day time frame, the DHS will contact the NRC to discuss a mutually agreeable date by which it will respond to the NRC's request for consultation.

The NRC and the DHS recognize that certain portions of the information exchanged pursuant to this Memorandum of Understanding may be Safeguards Information in accordance with section 147 of the Atomic Energy Act of 1954, as amended; classified information; or other sensitive information that must be properly identified and protected from public disclosure in accordance with applicable requirements.

IV. Working Arrangements

The NRC Point of Contact for this agreement is :
Team Leader, New Reactor Security Team, Reactor Security Branch, NSIR

The DHS Point of Contact for this agreement is:
Lead, Nuclear Sector Branch, CNPPD

V. Funding

All activities pursuant to this MOU are subject to the availability of appropriated funds and each agency's budget priorities.

VI. Memorandum of Understanding

This MOU shall not be construed to provide a private right of action for or by any person or entity.

This MOU is effective upon signature by both parties. It will remain in effect until terminated by one of the parties following 30 days advance written notice to the other party.

Modifications to this MOU may be made by written agreement of both parties.

Approved for the U.S. Nuclear Regulatory Commission

Dated: December 8, 2006

 /RA/
Luis A. Reyes
Executive Director for Operations

Approved for the Department of Homeland Security

Dated: February 20, 2007

 /RA/
Robert B. Stephan
Assistant Secretary for Infrastructure Protection