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POLICY ISSUE
(Information)

October 29, 1999

SECY-99-257

FOR: The Commissioners

FROM: William D. Travers
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).

DISCUSSION:

The Communicated Threat Credibility Assessment Team (CAT) was jointly developed and funded by NRC and the Department of Energy (DOE) 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.

CONTACT: John Davidson, NMSS/FCSS
301-415-8130

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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.



William D. Travers
Executive Director
for Operations

Attachments:

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

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**MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF
INVESTIGATION AND THE NUCLEAR REGULATORY COMMISSION REGARDING
NUCLEAR THREAT INCIDENTS INVOLVING NRC LICENSED FACILITIES,
MATERIALS, OR ACTIVITIES.**

I. PURPOSE

In recognition of the responsibilities and functions of the Federal Bureau of Investigation (FBI) and the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954, as amended, this Memorandum of Understanding (MOU) delineates the responsibilities of each agency regarding nuclear threat incidents involving NRC-licensed facilities, materials, or activities. (This agreement does not affect the procedures and responsibilities set forth in the November 23, 1988, Memorandum of Understanding between the NRC and the Department of Justice (DOJ) regarding cooperation concerning NRC enforcement actions, criminal prosecution by DOJ, and the exchange of pertinent information.)

Having closely related statutory responsibilities with regard to nuclear materials, facilities, and activities in the United States, the FBI and NRC must cooperate fully in carrying out their respective responsibilities in the interest of achieving:

1. Effective communication and exchange of relevant information, and
2. A timely, reliable, and effective response to a nuclear threat incident.

II. DEFINITIONS

For the purpose of this agreement, nuclear threat incidents are defined as threats, or acts of theft or sabotage in the U.S. nuclear industry, including the following:

- o Theft or attempted theft of NRC-licensed special nuclear material.
- o Sabotage or attempted sabotage of NRC-licensed nuclear facilities or NRC-licensed transportation activities.
- o Attacks on NRC-licensed nuclear facilities or activities.
- o Credible threats involving NRC licensed facilities, materials, or activities.

III. RESPONSIBILITIES

A. The FBI

The FBI derives the authority to investigate criminal matters related to NRC licensed facilities, materials, or activities from the Atomic Energy Act of 1954, as amended; Title 18, Section 831 "Prohibited transactions involving nuclear materials," and other Federal statutes as may be applicable. The FBI has been designated as the lead agency for coordinating the Federal response to acts of terrorism within the United States by National Security Decision Directive (NSDD) Number 207 and the National System for Emergency Coordination (NSEC).

It is therefore understood that the FBI shall:

1. Provide to NRC, intelligence information concerning possible criminal acts relative to the security of nuclear facilities, materials, or activities.
2. Notify NRC when allegations of a serious nature arise, or derogatory information is developed involving licensee personnel occupying positions considered critical to the safety and security of nuclear facilities or activities.
3. Investigate ongoing nuclear-related threat situations; advise NRC regarding the credibility and danger of such threats.
4. Establish liaison and develop contingency response plans with pertinent local law enforcement agencies to ensure effective and coordinated law enforcement response operations.
5. In accordance with the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, conduct identification and criminal history records checks on individuals with unescorted access to NRC-licensed nuclear power plants or access to Unclassified Safeguards Information.
6. Establish liaison with pertinent NRC Headquarters staff, NRC regional offices, and licensed facilities to ensure effective information exchange, threat evaluation, and contingency response planning.

In the event of a nuclear threat incident the FBI shall:

7. Coordinate the Federal response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities. The FBI will rely on the NRC on matters concerning public health and safety, as they relate to the nuclear facility, material, or activity.

8. Manage the law enforcement and intelligence aspects of the response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.
9. Establish and maintain contacts and coordinate the incident response with other Federal and local law enforcement agencies and military authorities, as appropriate.
10. Ensure that all reasonable measures are provided to ensure the physical safety and security of all NRC personnel and equipment to be used in support of the incident.
11. Promptly provide NRC with all information applicable to an assessment of a perpetrator's operational capability to carry out a threat.
12. At the scene of a nuclear threat incident, provide the necessary support, as may be needed by NRC personnel, in carrying out assigned operations and actions to protect the public from radiological hazards.
13. Request Department of Defense (DOD)/Civil Explosive Ordnance Disposal (EOD) resources, as appropriate.

B. The NRC

NRC shall provide, to the extent compatible with its primary mission to protect the public's health and safety, as required by the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and the Omnibus Diplomatic Security Act and Anti-Terrorism Act of 1986, scientific and technical support to the FBI upon notification of the existence of a nuclear threat incident.

It is therefore understood that NRC shall:

1. Review and correlate intelligence information on possible criminal acts received from the FBI; evaluate potential adversary capabilities and trends as a basis for rulemaking, evaluations, and systems design.
2. When informed of an FBI investigation involving an NRC-licensed nuclear facility or activity, will promptly provide to the FBI investigating office a list of all positions considered critical to the safety and security of that facility or activity.
3. Establish liaison with FBI Headquarters staff and field office personnel to ensure effective information exchange, threat evaluation, and contingency response planning.

4. Support joint operational readiness planning between licensees and associated local law enforcement agencies for prompt law enforcement response assistance when needed at licensed facilities or activities.
5. Notify the FBI of threats involving NRC-licensed nuclear facilities, materials, or activities; assist the FBI in evaluating the nuclear aspects and the credibility of such threats, as appropriate.
6. Disseminate, with the approval of the FBI, to the affected licensees, alert and warning information received from the FBI about specific nuclear-related threats.

In the event of a nuclear threat incident, NRC shall:

7. Plan for and manage the public health and safety aspects of the response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.
8. Provide NRC field liaison and technical assistance to the FBI at the scene of an incident.
9. Evaluate the radiological hazards of the particular incident and provide technical assessment of any potential or actual impact upon the public health and safety.
10. Ensure that all reasonable measures are provided for the health and safety of all FBI personnel and equipment involved in the support of the incident.
11. Provide for the health and safety of the public from radiological hazards.

C. Joint

The FBI and NRC shall:

1. Coordinate all proposed press releases related to nuclear threat incidents involving NRC-licensed facilities, materials, or activities.
2. Identify individuals assigned to fulfill the positions and responsibilities outlined in Section III of this agreement.
3. Handle all threat incident information with adequate security and confidentiality commensurate with national security guidelines and the standards for the preservation of criminal evidence.

4. Review and evaluate the events leading to and occurring during a nuclear threat incident for the purpose of improving upon future joint responses.
5. Exercise and test nuclear threat incident management procedures, equipment, and personnel.

IV. STANDARD PROCEDURES

A. Initial Notification

1. Nuclear threat incidents involving NRC-licensed facilities, materials, or activities may be reported to either the FBI, NRC, or others. Upon receipt of a reported threat, the agency informed shall immediately notify the other concerned agencies about the situation and exact information known.
2. The FBI and NRC will notify appropriate individuals and offices of any nuclear emergency in accordance with current procedures and agreements.

B. Points of Contact

1. The FBI Special Agent in Charge of the responding FBI field office will take command of the field operations in a nuclear threat incident involving NRC-licensed facilities, materials, or activities. At the Headquarters level, a Special Agent may be designated to act as a liaison officer with the NRC Executive Team (ET).
2. The NRC Headquarters ET will convene and during the initial stage of the response will direct NRC activities. The Director may transfer authority for managing the NRC emergency response to the Director of Site Operations.
3. The FBI and NRC field representatives will coordinate and cooperate with each other in carrying out their respective responsibilities. The FBI and NRC representatives will report on the situation and make recommendations to their respective agencies regarding the need for additional assistance at the scene.
4. The FBI and NRC will maintain points of contact with the other Federal agencies involved in responding to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

V. THREAT ASSESSMENT

1. NRC will provide scientific and technical advice for determining the credibility of specific nuclear threats and potential hazards associated with those threats.
2. NRC will endeavor to verify, with the cooperation of the Department of Energy and/or the Department of Defense, whether any source material, special nuclear material, or radioactive by-products, are missing or unaccounted for.

VI. FUNDING RESPONSIBILITIES

Interested parties will each fund for the cost incurred in providing the necessary assistance required to meet the responsibilities defined in this MOU.

VII. TERMS OF AGREEMENT

1. This Agreement will become effective immediately upon signature by all parties and shall continue in effect unless terminated by any party upon 120 days notice in writing to all other parties.
2. Amendments or modifications to this Agreement may be made upon written notice by all parties to the Agreement.

For the Federal Bureau of Investigation

William S. Sessions, date May 29, 1991
William S. Sessions
Director

For the Nuclear Regulatory Commission

Kenneth M. Carr, date 13 March 1991
Kenneth M. Carr
Chairman

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.

ATTACHMENT 2

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."	It is understood that each agency will respond, including notifying other agencies, per established response procedures. Revision not warranted.