



Department of Energy  
Washington, DC 20585

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
AND THE UNITED STATES DEPARTMENT OF ENERGY AND THE NATIONAL NUCLEAR SECURITY ADMINISTRATION**

**REGARDING SECURITY COGNIZANCE, INDUSTRIAL SECURITY SERVICES AND RELATED ACTIVITIES UNDER THE  
NATIONAL INDUSTRIAL SECURITY PROGRAM FOR OPERATIONS WITH NUCLEAR REGULATORY COMMISSION AND  
DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION CONTRACTS OR LICENSES THAT  
INVOLVE CLASSIFIED INFORMATION**

**I. PURPOSE AND SCOPE**

The U.S. Nuclear Regulatory Commission (NRC), the U.S. Department of Energy (DOE) and the National Nuclear Security Administration (NNSA), (hereinafter "the Parties") enter into this Memorandum of Understanding (MOU) to define and set forth their mutual understanding of how they will establish and execute industrial security services for contractors and licensees utilizing classified information provided by the government under contracts or licenses issued by the Parties. Guiding principles to which the Parties subscribe include the following:

- The Parties will seek to minimize redundant or conflicting oversight activities and requirements.
- The Parties will apply reciprocity with regard to processing Entity Eligibility Determinations, which includes facility clearances (FCLs) and access authorizations/personnel security clearances (PCLs) for contractors and/or licensees to the maximum extent allowable by law.
- The Parties will maximize information sharing regarding contractor and licensee operations where each agency has an interest to ensure compliance with the National Industrial Security Program. The Parties will collaborate on mutually agreeable processes and procedures to facilitate information sharing.

The purpose of this MOU is to provide efficient and effective coordination and oversight of contracts or licenses involving classified information, subject to each agency's retained authorities and interests. It does not extend to non-security operational work to be performed under contracts or licenses. This MOU only addresses processes and activities that pertain to classified information under the National Industrial Security Program (NISP) while other security interests and work scope (e.g., special nuclear material) may require separate oversight.

This MOU is neither a fiscal nor a funds obligating document. Nothing in this MOU authorizes or intends to obligate the Parties to expend, exchange, transfer, or reimburse any funds, services, or supplies, or to enter into any contract or license, assistance agreement, interagency agreement, or any other financial obligation.

Nothing in this MOU restricts or otherwise limits the authority of any Party to exercise their full regulatory authority, including oversight, inspection and enforcement authorities within their jurisdiction.

This MOU is strictly for the internal management purposes of each of the Parties. It is not a legally enforceable document and shall not be construed to create any legal obligation on the part of either Party or to provide a private right or cause of action for or by any person or entity.

This MOU supersedes the agreement between NRC and DOE dated October 9, 1996.



## II. BACKGROUND

---

Executive Order 12829, *National Industrial Security Program* and 32 *Code of Federal Regulations* (CFR) Part 2004, *National Industrial Security Program* established a framework and guidelines to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. The Executive Order states, “[r]edundant, overlapping, and unnecessary requirements impede” the “economic and technological interests of the nation.”

Further, Section 202 (c) of the Executive Order states, “[t]he Secretary of Energy and the Nuclear Regulatory Commission retain authority over access to information under their respective programs classified under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).” The Secretary or the Commission may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements to have industrial security services performed to inspect and monitor these programs or facilities, in whole or in part, on behalf of the Secretary or the Commission.

Therefore, the Parties retain unique and complementary authorities for granting access to classified information and performing oversight of contractor and licensee programs to ensure classified information is adequately handled and protected.

The NRC and the DOE are Cognizant Security Agencies (CSAs) under the NISP. Correspondingly, 32 CFR Part 2004 states:

- “*Cognizant Security Agencies (CSAs)*” means the Executive Branch departments and agencies authorized in EO 12829, as amended, to establish industrial security programs:
- “*Cognizant Security Office (CSO)*” means the organizational entity delegated by the Head of a CSA to administer industrial security on behalf of the CSA.

## III. AUTHORITY

---

The Parties enter into this MOU under the authority of Executive Order 12829, *National Industrial Security Program*, and 32 CFR Part 2004, *National Industrial Security Program*.

DOE enters into this MOU under the authority of Section 646 of the Department of Energy Organization Act (Pub. L. 95-91, as amended; 42 U.S.C. § 7256).

NNSA enters into this MOU under the authority of the National Nuclear Security Administration Act (Pub. L. 106-65, as amended).

## IV. PROCESS

---

When the Parties have contracts or licenses involving access to classified information with the same contractor or licensee, they will mutually determine and document how industrial security services will be administered for that entity and any performance location(s) in accordance with their respective authorities, applicable regulations, national standards and this understanding.

Industrial Security Services:

A single CSO will be identified by mutual agreement between the Parties, if practical, according to the factors relevant to the given scenario. Otherwise, roles and responsibilities for each Party will be identified when the Parties determine that shared performance of security services is the most efficient and effective approach. Accordingly, redundant reviews, inspections and requirements will be avoided. Conflicting requirements will be resolved, validated as necessary, or eliminated.

These industrial security services include:

- Entity Eligibility Determination
  - Processing facility clearances,
  - Processing personnel security clearances and access authorizations, and
- Security Performance Oversight - Conducting inspections of security plans, procedures and operations.

For this MOU, the following factors will be considered when determining which CSA(s) will be designated by agreement to provide industrial security services.

- Number and scope of classified interests.
- Level and category of classified information/matter.
- Additional access requirements.
- Whether possession and storage of classified information/matter is required at the contractor's or licensee's facility.
- Statutory and other mandatory authorities and responsibilities.

#### Entity Eligibility Determinations (EEDs)

The parties agree that NRC will use DOE Foreign Ownership, Control, and Influence (FOCI) investigative processing for facilities with mutual security interests. However, NRC retains FOCI determination authority for licensee and certificate holder facilities.

#### Facility Clearances (FCLs):

FCLs will be considered valid and acceptable for use on a fully reciprocal basis provided they meet the requirements applicable to the level and category of the classified information involved.

Each of the Parties agrees to notify the others upon taking action to invalidate or terminate (or any similar type action) an FCL of a contractor or licensee.

#### Personnel Security Clearances (PCLs)/Access Authorizations:

PCLs will be considered valid and acceptable for use on a fully reciprocal basis provided they meet the respective agency requirements applicable to the level and category of the classified information involved in a contract or license, and the clearance was originally granted without an Exception (Condition, Deviation, or Waiver), and the individual is currently affiliated with the other CSA as a Federal employee, contractor, or military service

member. The CSA without oversight is responsible for assisting with scheduling reinvestigations for contractor and licensee personnel exclusively under its control.

DOE and NNSA will determine access authorizations for all contractors or licensees working on contracts that involve DOE or NNSA Restricted Data in accordance with the Atomic Energy Act, as amended.

The Parties agree to share relevant personnel security and related information with one another, especially when that information may have an effect on another party allowing access to classified information, consistent with the Privacy Act and other applicable laws.

#### Performance Oversight:

Once the appropriate CSO has been identified for a particular contract or license through mutual agreement, that CSO will provide industrial security services consistent with the requirements of the NISP for that contractor or licensee for the Parties.

The Parties will share results of security reviews, suspicious contact reports, adverse information reporting, security violations, and other relevant changes that may affect an EED as appropriate and to the extent permitted by law.

The Parties will mutually determine how to keep one another apprised of plans, schedules and results of security reviews.

#### V. CHANGES

---

Industrial Security Services will be reviewed and renegotiated as needed.

The Parties agree to inform one another regarding any addition, modification, or deletion of a security interest at a facility where a mutual security interest exists.

Each Party will apprise the others of any planned changes to current practices and procedures as related to Industrial Security Services activities or determinations.

Deviations from national directives will be processed as required by the governing directive.

#### VI. RESOLUTION OF DISPUTES

---

The Parties will work together to amicably resolve any disputes or disagreements that might arise over matters within the scope of this MOU. Resolution of differences between the Parties will be the initial responsibility of the respective chiefs of the responsible branch or office director within the NRC, DOE, and NNSA.

If the issue cannot be resolved at the branch or office level, the Parties agree to raise resolution discussions through their management chain up to the CSAs (i.e., the Chairman of the NRC and the Secretary of Energy) if necessary.

Information Security Oversight Office (ISOO) involvement will be requested only after both organizations have exhausted all the above.

#### VII. MOU POINTS OF CONTACT

---

For NRC licensee facilities and personnel and licensee contractor personnel, the principal senior management point of contact for questions concerning this MOU will be the Director, Division of Security Operations, Office of Nuclear Security and Incident Response, NRC. For NRC contractor facilities and personnel, the principal senior management point of contact for questions concerning this MOU will be the Director, Division of Facilities and Security, Office of Administration, NRC. For all DOE facilities, the principal senior management point of contact for questions concerning this MOU will be the Director, Office of Security, Office of Environment, Health, Safety and Security, DOE. For all NNSA facilities, the principal senior management point of contact for questions concerning this MOU will be the Chief and Associate Administrator for Defense Nuclear Security, NNSA. However, operational contacts will be determined separately.

Identification of these contacts is not intended to restrict communication between NRC and DOE and NNSA staff members on security and other day-to-day issues.

#### VIII. EFFECTIVE DATE, MODIFICATION, TERMINATION

---

This MOU is effective upon signature by all Parties.

This MOU may be reviewed and revised by mutual written agreement between the Parties as necessary, but no less frequently than in 5-year intervals, measured from the effective date.

This MOU may be terminated by mutual written agreement between the Parties, or by any Party upon 30 days written notice to the other Parties.

#### IX. SEPARABILITY

---

If any provision of this MOU, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this MOU and the application of the remaining provisions to other persons or circumstances shall not be affected.

X. SIGNATURES

---

Brian E. Holian, Director  
Office of Nuclear Security and  
Incident Response  
U.S. Nuclear Regulatory Commission

Date: 25 MAY 2017

B. E. Holian

<sup>For</sup>  
Samuel N. Callahan, Director  
Office of Security  
Office of Environment, Health, Safety and Security  
U.S. Department of Energy

Date: April 18, 2017

M. N. Callahan

Cynthia Carpenter, Director  
Office of Administration  
U.S. Nuclear Regulatory Commission

Date: 30 May 2017

Cynthia A. Carpenter

Jeffrey R. Johnson, Chief  
Defense Nuclear Security  
National Nuclear Security Administration  
U.S. Department of Energy

Date: APRIL 18, 2017

Jeffrey R. Johnson