

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 1280.1A

11-15-91

SUBJECT: MEMORANDUMS OF UNDERSTANDING

1. PURPOSE. To identify the policies, procedures, and authority for preparing and executing memorandums of understanding and to define the term "memorandum of understanding" as used in the Department of Energy (DOE).
2. CANCELLATION. DOE 1280.1, MEMORANDUMS OF UNDERSTANDING, of 9-20-85.
3. REFERENCES.
 - a. DOE 1270.1, FUNDS-OUT INTERAGENCY AGREEMENTS, of 6-13-79, which provides guidance on the use of funds-out interagency agreements for obtaining materials and services to be provided by other Federal agencies to DOE.
 - b. DOE 2200.6, FINANCIAL ACCOUNTING, of 10-24-88, which provides DOE policy and general procedures for the financial management of cash, advances, receivables, inventories, and investment of funds; accountability for plant and capital equipment; current and long-term liabilities; and accounting for equity, reimbursable work, revenues, collections, and expenses.
 - c. DOE 3300.1A, ASSIGNMENT OF DEPARTMENTAL PERSONNEL OUTSIDE THE DEPARTMENT, of 4-23-84, which permits assignment of DOE employees to non-DOE activities and organizations when this furthers the interests of the Department or the Federal Government.
 - d. Office of Management and Budget (OMB) Circular A-97, "Rules and Regulations" of 8-29-69, which permits Federal, agencies to provide specialized or technical services to State and local units of Government.
 - e. Public Law 95-91, sections 102(2), (10), (11), and 646, Department of Energy Organization Act, of 8-4-77, which envisions consultation, coordination and cooperation with Federal departments and agencies, State, and tribal governments, as well as cooperative, or other similar transactions, with private organizations and persons, and integration of domestic energy matters.
 - f. Public Law 93-438, sections 103(1), 103(5), 103(10), 104(i), and 107(a), Energy Reorganization Act of 1974, of 10-11-74, which permits DOE to use the facilities

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Office of Organization, Resources
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of public agencies, requires DOE to consult with the heads of other agencies on the use of their facilities, allows DOE to enter into cooperative projects with other public and private agencies, allows DOE to transfer energy research and development programs to another agency, and directs how the programs are to be accomplished, including contracting out such work.

- g. Title 31 United States Code (U.S.C.) 1535, Economy Act of 1932, of 6-30-82, as amended by Public Law 98-216, which provides that any executive Department of the Government may obtain from any other such department or independent establishment of the Government, work or services that the requisitioned Federal agency may be in a position to furnish.
 - h. Title 42 United States Code (U.S.C.) 2051, which directs that DOE make arrangements for ensuring the conduct of research, development and training in the area of nuclear energy by private or public institutions, or persons.
- 4. DEFINITION. A memorandum of understanding (MOU) is a written agreement broadly stating basic understandings of tasks and describing a method for performing these tasks between the Department and other signatory authorities which include: other Federal agencies; local, State, international, tribal, or other Government entities; the private sector; and educational institutions. An MOU is not a binding contract. It cannot be used to obligate or commit funds or as the basis for the transfer of funds. Agreements within DOE between Departmental Elements are not considered MOUs for purposes of this Order (a Memorandum of Agreement can be used between/among DOE Elements).
- 5. EXCLUSION. The provisions of this Order do not apply to documents establishing legally binding commitments or obligations, or permitting the transfer of funds set forth in:
 - a. international agreements executed by DOE even though such documents may be titled a "Memorandum of Understanding";
 - b. contracts, grants, cooperative agreements, loan guarantees, and similar instruments;
 - c. interagency agreements; and
 - d. agreements between or among Departmental Elements.
- 6. POLICY.
 - a. DOE may initiate, or be a party to, MOUs to document agreements that are being or have been established to assist in meeting its Department objectives with: Federal agencies; local, State, international, tribal, and other government entities; the private sector; and educational institutions.

- b. MOUs dealing with matters having an agency wide impact or effect shall be signed by the Secretary (S-1), the Deputy Secretary (S-2) or the Under Secretary (S-3).
- c. An MOU dealing with programmatic, regional, and Headquarters matters may be signed by persons responsible for first-level Departmental organizations, that is, Heads of Departmental Elements. This responsibility may be delegated by Heads of Departmental Elements.
- d. MOUs shall be kept current and new MOUs, to the extent practicable, shall not duplicate existing MOUs.
- e. MOUs shall not cover a time period greater than five (5) years from the date of signature of the last signing party. At the end of the time period to be covered, the MOU shall be reviewed and a decision made on whether to renew/revise and reissue or to terminate the MOU.

7. RESPONSIBILITIES AND AUTHORITIES.

- a. The Secretary, The Deputy Secretary, or the Under Secretary.
 - (1) Approves policy on the use of MOUs in support of programs and delegates authority to carry them out.
 - (2) When appropriate, executes MOUs with heads of Federal government agencies, State, local, international, and tribal government entities, educational institutions, and private sector entities.
- b. The Office of Administration and Human Resource Management (AD-1) through the Director for Organization, Resources and Facilities Management (AD-10).
 - (1) Provides advice, guidance, and assistance in the drafting and negotiation of MOUs, as requested by the appropriate Head of Departmental Element.
 - (2) Updates and maintains an inventory of all current MOUs.
 - (3) Prior to final approval, performs an administrative review on draft, new or amended MOUs to identify possible conflicts with or duplication of existing MOUs and then makes any recommendations based upon such review to the appropriate Head of Departmental Element.
 - (4) Assures that Heads of Departmental Elements conduct a review 2 years after issuance of an MOU under their cognizance (and every 2 years thereafter) in order to determine whether or not the MOU remains current and should remain in force.

- c. General Counsel. Appropriate field and Headquarters Counsel shall conduct a legal review and concurrence of all MOUs. If requested by the Head of a Departmental Element, shall participate in the discussion and drafting of an MOU.
- d. Heads of Departmental Elements.
 - (1) Discuss, coordinate, execute, and administer MOUs for their program areas (to the extent practicable, avoid duplication of existing MOUs).
 - (2) Submit statutorily required MOUs through the Office of the Executive Secretariat for appropriate review and signature of the Office of the Secretary. Statutorily required MOUs shall be tracked in the Action Coordination and Congressional Reports Tracking System (ACCRTS).
 - (3) Retain the signed originals of all executed MOUs, and amendments thereto, for their areas.
 - (4) Provide a copy of each executed MOU to all interested or affected Departmental Elements, appropriate field or Headquarters legal counsel and to AD-10, Attention: Systems Management and Evaluation Branch (AD-121).
 - (5) Establish one point of contact for their office to maintain all copies of executed MOUs, and prepare quarterly reports. The name of the contact point should be provided to AD-121, no later than 30 days after issuance of this Order.
 - (6) Provide a copy of an MOU Quarterly Report for any newly executed MOUs. The report should include the following: primary agency, sub-agency (if applicable), title, effective date, and the status of the MOU. The reports are due 30 days after the quarter ends to AD-10, Attention: Systems Management and Evaluation Branch (AD-121).
 - (7) Shall notify AD-10 of the results of their biennial review of appropriate MOUs.
- e. Deputy Assistant Secretary for Naval Reactors (NE-60): Executive Order 12344, statutorily prescribed by P.L. 98-525 (42 U.S.C. 7158, note), establishes the responsibilities and authorities of the Director, Naval Nuclear Propulsion (who is also the Deputy Assistant Secretary for Naval Reactors within the Department), over all facilities and activities which comprise the Program, a joint Navy-DOE organization. These responsibilities include "...administration of the Naval Nuclear Propulsion Program..." In view of these responsibilities, the provisions of this Order do not apply to NE-60. NE-60 will coordinate MOUs for matters under

NE-60 cognizance with the Office of General Counsel and other Departmental Elements as appropriate.

- f. The Office of Inspector General (OIG): The Inspector General Act of 1978, as amended, 5 U.S.C., App. 3, and DOE 2320.3, RESPONSIBILITIES, AUTHORITIES, AND RELATIONSHIPS WITH OTHER DEPARTMENTAL ELEMENTS, of 1-5-90, provide the Inspector General with independent authority to enter into agreements with public agencies and private persons. When the OIG enters into an MOU, the OIG is not subject to the provisions of this Order.

8. PROCEDURES. Following are procedural guidelines for initiating MOUs.

- a. Prior to entering into any discussion for an MOU, Departmental officials shall ensure that the arrangements and understandings therein are consistent with applicable law and regulations and with current and planned Departmental policies, programs, and budgets.
- b. As appropriate, the initiating office shall coordinate the proposed MOU with other interested or affected Headquarters and field organizations. Implementation of the understandings established by an MOU shall be accomplished through an interagency agreement, contracts or other appropriate agreements between the parties.
- c. The initiating office shall provide the Office of Organization, Resources, and Facilities Management (AD-10) and the appropriate Headquarters or Field legal counsel with all proposed new or revised MOUs. AD-10 will conduct an administrative review of the proposed MOU to identify possible conflicts with or duplication of existing MOUs, and provide the initiating office, within 10 working days, with recommendations for revisions if deemed necessary. Appropriate Headquarters or Field counsel shall conduct a legal review of all MOUs and respond directly to the initiating office within 10 working days.
- d. The Departmental Element that is the initiating office shall then negotiate, obtain necessary coordination and signatures, and execute the MOU. Signed copies of the executed MOU and amendments thereto shall be forwarded to interested or affected organizations, and to AD-10, Attention: Systems Management and Evaluation Branch (AD-121).
- e. Departmental Elements shall notify AD-10, Attention: Systems Management and Evaluation Branch (AD-121), of the results of their biennial review of appropriate MOUs.

9. SUGGESTED OUTLINE FOR MEMORANDUMS OF UNDERSTANDING: A suggested outline for the contents of an MOU follows. Regardless of format used, the

content should include the purpose, timing (including a termination date; however, in the absence of a specified date see subparagraph (3)(c) below for suggested wording), and each participant's responsibilities or interests.

- a. MOUs generally have three major parts: introduction, management and program guidelines, and administration.
 - (1) Introduction. Four sections are suggested.
 - (a) Background. Cite the interests or responsibilities of each agency, including a summary of pertinent statutes and legislative direction.
 - (b) Purpose. Briefly state the purpose.
 - (c) Authority. Identify the authority for the subject matter of an MOU, as well as the authority of the MOU itself.
 - (d) Policy. Briefly state the general policy on cooperation and joint activities.
 - (2) Management and Program Guidelines. This should contain a description of the administrative mechanisms to be established including lines of authority and should provide program guidance. The following sections are recommended.
 - (a) Management and Review. Include provisions for:
 - 1 Responsibilities of participating parties;
 - 2 Periodic review by designated officials of participating organizations;
 - 3 Establishment of a steering committee and working committees to review and provide further guidance for joint activities, as appropriate; and
 - 4 Supplementary interagency or other agreements.
 - (b) Guidelines. Provide specific guidelines for program planning and implementation. Use subsections as appropriate.
 - (c) Program Funding suggested wording is: "The details of the levels of support to be furnished one organization by the other with respect to funding will be developed in specific interagency agreements or other agreements, subject to the availability of funds. This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds.

DOE and (other organizations) will provide each other mutual support in budget justification to OMB and hearings before the Congress with respect to programs on which the organizations collaborate."

- (d) Management Arrangements suggested wording is: "This memorandum of understanding envisages direct communication between DOE and officials of other organizations involved in managing the work to be performed. Interagency agreements or project plans will set forth specific arrangements for program implementation. Such plans set forth necessary cooperative arrangements and procedures for handling decisions required by various Government officials. Specific funding and tasking will be implemented through interagency agreements."

(3) Administration.

- (a) Patents and Technical Data suggested wording is: "Appropriate patent and other intellectual property provisions shall be included in interagency agreements and any other agreements entered into by the parties in order to implement this MOU. DOE patent and intellectual property policies shall apply to any such work performed by a contractor (including any subcontractor) which is funded in whole or in part by DOE. Rights to inventions made by United States Government employees shall be determined by the employing agency."
- (b) Public Information Coordination suggested wording is: "Subject to the Freedom of Information Act (5 U.S.C. 552), decisions on disclosure of information to the public regarding projects and programs referenced in this MOU shall be made by DOE following consultation with the other party's representatives."
- (c) Amendment and Termination suggested wording is: "This memorandum of understanding may be amended by written agreement between DOE and other party (or parties). This MOU may be terminated by the mutual written agreement of DOE and the other party (or parties) or by either party upon ____-day written notice to the other party."

- (d) Effective Date suggested wording is: "This MOU shall become effective upon the latter date of signature of the parties. It shall remain in effect for a 5-year term from the effective date."

BY ORDER OF THE SECRETARY OF ENERGY:



JOHN J. NETTLES, JR.
Director of Administration
and Human Resource Management