



Department of Energy
National Nuclear Security Administration
Washington, DC 20585

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF ENERGY'S NATIONAL NUCLEAR SECURITY ADMINISTRATION AND OFFICE OF HEARINGS AND APPEALS

A. PURPOSE

This Memorandum of Understanding (MOU) establishes a process for the Office of Hearings and Appeals (OHA) to conduct adjudicative proceedings under the DOE regulations for the National Nuclear Security Administration (NNSA), and for the Administration to assure that the results of those proceedings are binding on and implemented by the affected NNSA elements and NNSA contractors.

B. BACKGROUND

The National Nuclear Security Administration Act (the Act) established the NNSA as a separately organized agency within the DOE. The Act provides that officers or employees of the NNSA and their contractors shall not be subject to the authority, direction, or control of, any officer of the DOE who is not an employee of the NNSA.

The Act does not create a separate OHA within the NNSA. OHA historically performed and continues to perform adjudicative functions for the entire DOE under DOE regulations. These adjudications can affect the officers and employees of the NNSA, the national security laboratories, and the nuclear weapons production facilities.

The NNSA Administrator and the OHA Director have concluded that in order to further relevant statutory, regulatory and DOE goals, the OHA will continue to perform adjudicative functions involving NNSA elements and contractors. Under the process described below the Administration will have the opportunity to review and approve or disapprove OHA decisions before issuance. When issued, the Administration will assure implementation by affected NNSA elements and contractors. The Administrator and Director recognize that many OHA adjudications are done under statutory and regulatory time frames, so the NNSA will endeavor to complete its review within five days.

C. AGENCY INTERFACE PROCEDURES

Before issuing a decision and order that would affect an NNSA element or contractor, the OHA will provide a draft of the determination to the NNSA General Counsel for review. The General Counsel shall inform the OHA Director of the NNSA's approval or disapproval. If the NNSA objects to the determination, the General Counsel shall



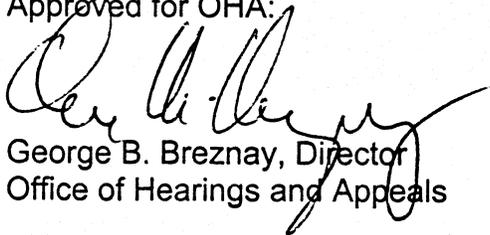
specify the changes NNSA seeks. If the OHA and the NNSA cannot reach agreement on a decision, the matter will be referred for resolution to the Deputy Secretary of Energy. Each decision issued by the OHA after NNSA review will contain the following statement:

This decision and order has been reviewed by the National Nuclear Security Administration (NNSA), which has determined that, in the absence of an appeal or upon conclusion of an unsuccessful appeal, the decision and order shall be implemented by each affected NNSA element, official, or employee, and by each affected contractor.

D. EFFECTIVE DATE

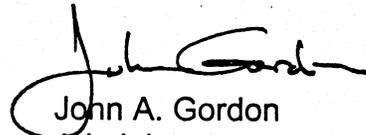
NNSA and OHA agree to implement this MOU immediately. All actions taken by OHA under the authority of the DOE regulations that affected NNSA elements before the effective date of this MOU are confirmed, ratified, and adopted by the Administration, and shall remain in force as if taken under this MOU.

Approved for OHA:



George B. Breznay, Director
Office of Hearings and Appeals

Approved for NNSA:



John A. Gordon
Administrator

February 28, 2001

Date:

28 February 01

Date: