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CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: OIP

AUTHOR: Gene Aloise
AFFILIATION: GAO
ADDRESSEE: Gregory Jaczko
SUBJECT: Release of GAO-09-743R, U.S. -Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Porliferation Assessment Needs to be Strengthened

ACTION: Information
DISTRIBUTION: EDO, RF

LETTER DATE: 07/29/2009
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FILE LOCATION: ADAMS

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Joosten, Sandy

From: GAO Reports [GAOReports@gao.gov]
Sent: Wednesday, July 29, 2009 3:19 PM
To: GAO Reports
Cc: Phylis D Cline
Subject: Release of GAO-09-743R, U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened

Below is a link to the following product, which is being released today:

GAO-09-743R

U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened

<http://www.gao.gov/Products/GAO-09-743R>

Gene Aloise

Director, Natural Resources & Environment

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(148.184.100.43) with Microsoft SMTP Server id 8.1.358.0; Wed, 29 Jul 2009
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d="scan'208";a="5041166"

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From: GAO Reports <GAOReports@gao.gov>

To: GAO Reports <GAOReports@GAO.GOV>

CC: Phylis D Cline <ClineP@GAO.GOV>

Subject: Release of GAO-09-743R, U.S.-Russia Nuclear Agreement:
Interagency Process Used to Develop the Classified Nuclear
Proliferation Assessment Needs to Be Strengthened

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

June 30, 2009

Congressional Requesters

Subject: U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened

On May 13, 2008, the President submitted to Congress a proposed *Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy* (henceforth referred to as the U.S.-Russia 123 agreement) in accordance with the review requirements established under Section 123 of the Atomic Energy Act of 1954 (AEA), as amended.¹ The United States has agreements for peaceful nuclear cooperation governing nuclear exports to nearly 50 countries, Taiwan, and the International Atomic Energy Agency (IAEA). Such agreements provide the framework and authorization for civilian nuclear cooperation, but do not guarantee that cooperation will take place or that nuclear material or technology transfers will occur. The proposed agreement with Russia would, among other things, establish the legal basis for the Department of Energy (DOE) to work with Russia on large-scale development of nuclear energy. However, owing to Russia's status as a nuclear weapons state, the size of its nuclear complex, and past proliferation concerns, including weaknesses in the Russian export control system, an agreement for peaceful nuclear cooperation between the United States and Russia raised a number of concerns among Members of Congress.

Section 123 of the AEA (Section 123) identifies the key U.S. government agencies and sets forth the procedures for negotiating, proposing, and entering into peaceful nuclear cooperation agreements with foreign nations. Consistent with Section 123, the Department of State (State) is responsible for negotiating any proposed agreement, with the technical assistance and concurrence of DOE. After consultation with the Nuclear Regulatory Commission (NRC), State and DOE jointly submit the proposed agreement to the President, accompanied by the views and recommendations of State, DOE, and NRC. Section 123 also provides that State supply the President with an unclassified Nuclear Proliferation Assessment Statement (NPAS) for each proposed agreement, accompanied by a classified annex, prepared in consultation with the Director of National Intelligence that

¹Atomic Energy Act of 1954, ch. 1073, § 123, 68 Stat. 919, 946, as amended (codified at 42 U.S.C. § 2153). The Atomic Energy Act, as amended, is codified at chapter 23 of title 42, U.S. Code.

summarizes relevant classified information.² The NPAS serves as an analysis of the proposed agreement to ensure compliance with provisions of the AEA as well as the adequacy of safeguards and other control mechanisms to ensure assistance furnished under the agreement is not used to further any military or nuclear explosive purpose.

The NPAS further addresses whether the proposed agreement is consistent with the nine criteria set forth in Section 123(a). These criteria include guarantees that cooperating parties maintain the safeguards set forth in the agreement with respect to nuclear materials and equipment transferred under the agreement, and adequate physical security for all such material and equipment, and a stipulation that the United States has a right to require the return of any nuclear material and equipment transferred under the terms of the agreement if the cooperating party is a nonnuclear weapons state and either detonates a nuclear weapon or abrogates an IAEA safeguards agreement.³ Although NRC's role in the NPAS development process is primarily consultative, any actual transfers of nuclear equipment, technology, or materials to a foreign nation that are made subsequent to the negotiation and ratification of the agreement are subject to licensing regulations, requiring that NRC and, in certain cases, DOE, make independent determinations that such exports would not be inimical to the national security interests of the United States.⁴

When the negotiations are completed on an agreement for peaceful nuclear cooperation, the Secretaries of State and Energy are to jointly submit the agreement and related documents, including the NPAS and classified annex, to the President. NRC's views on the agreement are to be provided to the President in a separate letter. The President reviews the documents to determine if the proposed agreement will promote, and not undermine, the common defense and security. If the President approves the agreement, he will authorize the Secretary of State to arrange for its execution (signature). The President then transmits the proposed agreement, along with the NPAS and any accompanying annexes, to Congress for

²Title I of the Intelligence Reform and Terrorism Prevention Act of 2004 established the position of the Director of National Intelligence as the head of the U.S. intelligence community. See Pub. L. No. 108-458, § 1011, 118 Stat. 3638, 3643-62 (2004). Consistent with the authority granted under this Act, responsibility for consulting with the Secretary of State in preparation of the classified annex to the NPAS transferred from the Director of Central Intelligence to the Director of National Intelligence.

³See 42 U.S.C. § 2153(a).

⁴See, e.g., 42 U.S.C. § 2155.

its review. As a general matter, the agreement may be brought into effect after 90 days of continuous session of Congress unless a joint resolution of disapproval is enacted before the end of this period.⁵

On September 8, 2008, in a message to Congress, the President made a determination that, in light of military actions taken by the Russian Federation against Georgia, the statutorily required certification that he had earlier made regarding the proposed U.S.-Russia 123 agreement was no longer effective. As a result, the statutory prerequisite for the agreement to become effective, as required by the AEA, was no longer satisfied. The President's message stated that, if circumstances should permit future consideration of this agreement, a new determination would be made and the agreement would be resubmitted for congressional review pursuant to the AEA. This action had the effect of ending further congressional consideration of the agreement. If and when the President resubmits the agreement to Congress for consideration, the documents accompanying the agreement, such as the NPAS and classified NPAS annex, would likely be updated.

As agreed with your offices, GAO assessed the process by which the NPAS and classified annex that accompanied the U.S.-Russia 123 agreement were researched, written, and approved through the interagency process, prior to submission to Congress. To conduct our review, we met with officials from State, DOE, NRC, and the Office of the Director of National Intelligence (ODNI). We reviewed the unclassified NPAS and classified annex that accompanied the U.S.-Russia 123 agreement and discussed the documents' contents and process for development with relevant agency officials. We conducted our review from June 2008 to June 2009 in compliance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

We identified weaknesses in the process State used to ensure interagency consultation during the development of the classified NPAS annex that accompanied the U.S.-Russia 123 agreement. First, there are no formal guidelines or procedures governing the interagency consultation and review process used to

⁵Pursuant to Section 123, the President submits the text of a proposed agreement along with the accompanying unclassified NPAS to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives for consultation for a period of 30 days of continuous session. The proposed agreement, with the NPAS and any annexes, is then submitted to Congress (and referred to the above mentioned Committees) for a period of 60 days of continuous session, during which the committees consider it and report recommendations. Continuity is only broken by a *sine die* adjournment of a Congress (the final adjournment of an annual or 2-year session of Congress) though a recess by either House in excess of 3 days will not count against the requisite time periods. Therefore, the timely approval of a proposed agreement may be dependent upon the dates the President makes the requisite submissions.

develop 123 agreements and supporting documentation. Second, in part due to the lack of formal guidelines, the NRC Commissioners did not base their vote to approve the agreement on the final version of the classified NPAS annex, but instead relied on a draft version of the document. We found that the differences between the draft version NRC used to inform its vote and the final version of the classified NPAS annex were not merely editorial in nature. Third, ODNI officials told us the intelligence community's review of the classified NPAS annex would have benefited from additional time and that State did not provide the final version of this document to the intelligence community prior to the agreement's submission to the President to ensure that the intelligence community's views were adequately incorporated. In our view, these weaknesses need to be addressed to ensure adequate consultation of all key interagency parties. As a result, we are recommending improvements to the interagency review process, including establishing written guidance and ensuring adequate time for interagency consultations.

We provided a draft of this report to DOE, State, NRC, and ODNI. State and ODNI provided written comments, which can be found in enclosures I and II, respectively. State agreed with our recommendations and believes that they can help to streamline the process of developing and coordinating nuclear proliferation assessment statements and classified annexes associated with 123 agreements in the future. ODNI neither agreed nor disagreed with our recommendations, but did provide technical comments, which we incorporated as appropriate. NRC also provided technical comments, which we incorporated as appropriate. DOE reviewed but provided no comments on our draft report.

Lack of Guidance and Time Constraints Hampered Interagency Consultations on the Development and Review of the U.S.-Russia 123 Agreement's Classified NPAS Annex

We identified weaknesses in the process State used to ensure interagency consultation during the development of the classified NPAS annex that accompanied the U.S.-Russia 123 agreement, including a lack of formal guidelines, failure of NRC to analyze the final version of the annex prior to the Commission's vote on the agreement, and concerns with the consultative process involving the intelligence community.

State Has Not Developed Formal Guidelines to Clarify the Interagency Development and Review Process for the NPAS and Classified Annex

Section 123 provides that proposed agreements for peaceful nuclear cooperation shall be submitted to the President jointly by the Secretaries of State and Energy after consultation with NRC. NRC's views and recommendations on whether the President should approve the proposed agreement and authorize its execution, which, as a matter of practice, take into account NRC's review of the NPAS and classified annex, accompany the proposed agreement when the President submits it to Congress. The integrity of this consultative process is dependent upon NRC

receiving the documents and information it needs in a timely manner. Both State and NRC officials told us that there are no formal guidelines or procedures to establish how and when such consultations are to take place, in part because of the infrequency with which 123 agreements are negotiated and signed. State and NRC officials noted that, until 2008, there had been few new 123 agreements in recent years and that the majority of past 123 agreements had not been controversial.

With regard to the specific process State employed to consult with NRC for the proposed U.S.-Russia 123 agreement, NRC was part of the interagency negotiating team that worked with State to prepare the agreement for signature by the President. According to State officials, NRC was first provided with a copy of the unclassified NPAS on January 16, 2008. During this time, State was working to draft the classified NPAS annex. Due to issues associated with the classification level of this document and sensitivity of information in it, State transmitted it to different interagency parties at different times as security clearances were being validated. According to State, NRC initially received a draft of the classified NPAS annex on March 19, 2008, and provided staff-level comments to State on March 21, 2008. State then provided an updated copy of the classified annex to NRC (and other interagency partners) on April 8, 2008, with a request for any additional comments to be provided by April 17, 2008. After reviewing these documents, the NRC Commissioners voted unanimously on April 29, 2008, to recommend that the President approve the proposed agreement and authorize its execution. However, NRC officials told us that subsequent to the Commission's vote, State notified NRC that the version of the classified NPAS annex the Commission used to inform its vote was not the final version of the document. NRC officials told us that the version of the classified annex State provided to the Commission on April 8, 2008, was not marked "draft" and that the Commissioners and NRC staff believed that it was the final version. In commenting on an early version of this report, State officials accepted responsibility for not marking the version of the classified NPAS annex provided to NRC as draft, but also noted that NRC should bear responsibility for ensuring that they have the most up-to-date information prior to conducting a vote on an agreement. According to State, NRC did not request an updated version of the classified NPAS annex until July 29, 2008. State provided NRC with a final version of the document on July 31, 2008.

We reviewed both versions of the classified NPAS annex and found that the differences between the two versions were not merely editorial in nature. In some instances, the final version of the classified annex updated certain points with new information, while in other sections significant amounts of new text and further substantive information were added and other information was deleted.

Despite the differences between the two versions of the classified NPAS annex, the NRC Commissioners decided it was not necessary to conduct another vote or to revise their previous unanimous vote to approve the agreement. One NRC Commissioner told us that, although he would not have changed his vote on the agreement based on the changes State made to the classified NPAS annex, he was concerned about the integrity of the process State employed to solicit the

Commission's views. He said that, in the interest of good governance, the Commission should base its analysis and vote on the most complete and accurate information possible.

State officials acknowledged that the NRC Commissioners did not cast their votes based on the final version of the classified NPAS annex. However, State officials asserted that there were no material differences between the two versions that would have fundamentally altered the outcome of NRC's vote. State officials explained to us that in the interest of getting the U.S.-Russia 123 agreement to the President (and subsequently to Congress) to ensure that the agreement could take effect before the 110th Congress adjourned, consistent with Section 123, the department provided a draft version of the classified NPAS annex to NRC for its consideration and clearance. Further, State officials told us the Administration wanted to submit the agreement and supporting documents to Congress early enough in May 2008 to allow for at least 90 days of continuous session to be left in the 110th Congress before it adjourned *sine die*, which was expected to occur earlier than usual due to the November 2008 elections.⁶

In addition, NRC officials raised other concerns stemming from its classified NPAS annex review that they believed could have implications on NRC's future role in issuing licenses for nuclear exports that may take place under the terms of the proposed agreement. NRC officials told us that their review and approval of licenses for nuclear exports to Russia would depend on their receipt of timely and accurate information from the intelligence community. However, these officials expressed concern about what they viewed as insufficient information sharing with the intelligence community about specific issues of proliferation concern that came to light during NRC's review of the classified NPAS annex. Specifically, NRC officials told us that they was not previously aware of certain sensitive issues raised in the classified NPAS annex that they believed NRC should have been made aware of earlier as a matter of basic information sharing between government agencies involved in nuclear proliferation matters. According to NRC officials, the lack of information sharing in this instance raises questions about the timeliness and sufficiency of information NRC would receive in the future from the intelligence community that it would need to efficiently make determinations about nuclear export licenses to Russia permitted under the proposed 123 agreement.

⁶According to the Congressional Research Service (CRS), Congress was expected to adjourn on September 26, 2008. However, CRS believes that this represented only the 77th day of "continuous session" for the 110th Congress. Only a later *sine die* adjournment, "lame duck" session, recall by the President or congressional leadership, or the use of pro forma sessions instead of recesses would have allowed the 90th day of "continuous session," consistent with Section 123 to have been reached within the 110th Congress. See CRS, *Nuclear Cooperation Agreement with Russia: Statutory Procedures for Congressional Consideration and Their Implementation* (Washington, D.C., Nov. 26, 2008). GAO has not evaluated the accounting of days and has not independently determined whether the May 13, 2008, submission by the President would have provided for the requisite number of days of continuous session.

Concerns about the Consultative Role the Intelligence Community Plays in Developing the Classified NPAS Annex

The intelligence community plays an important, statutorily mandated consultative role in the development of the classified NPAS annex. However, while State officials told us they complied with the Section 123 requirement that the classified NPAS annex be prepared in consultation with the intelligence community, ODNI officials told us the intelligence community's review of the classified NPAS annex would have benefited from additional time. Furthermore, they noted that State did not provide the final version of this document to the intelligence community prior to the agreement's submission to the President to ensure that the intelligence community's views were adequately incorporated.

Regarding the specific process State employed for this consultation, State officials told us that the intelligence community reviewed and commented on an initial draft of the classified NPAS annex, and also reviewed a subsequent version to ensure proper dissemination of the sensitive, classified information contained in the annex. State officials told us that the initial draft of the classified NPAS annex was released from the Bureau of International Security and Nonproliferation (ISN) for intelligence community review on January 31, 2008. According to State, the document was sent to ODNI's Office of Legislative Affairs from State's Bureau of Intelligence and Research (INR) through the standard procedure that had been utilized for past 123 agreements. Officials from the National Intelligence Council within ODNI told us they received a draft of the classified annex on February 5, 2008, with a request for comments back to State on February 15, 2008. They told us that the draft of the classified NPAS annex was forwarded to five other agencies involved in nuclear intelligence matters for their review and comments.

ODNI officials noted several ways in which the process of integrating intelligence community input into the classified NPAS annex could be improved. For example, ODNI officials noted that they were provided only a short period of time—less than 10 working days—to review the initial draft and obtain and consolidate comments from the five relevant intelligence agencies. ODNI officials said the review was further complicated because information in the draft was not well sourced, meaning it took longer for the intelligence agencies to verify certain points in the draft document. ODNI officials told us that the comments they provided back to State were mostly technical in nature and that the limited comment period did not allow the intelligence agencies to conduct more substantive analysis of the information presented in the classified annex to determine, for instance, if additional issues should have been addressed.

On May 20, 2009, State officials commented on an early version of this report and told us that while the requested period of time was comparatively short, the intelligence community's comments were not received by State until March 4, 2008. Further, State noted that it received no request from the intelligence community for an extension to the review period. Finally, State officials maintained that they were not aware of the intelligence community's concerns regarding sourcing of the

classified NPAS annex until they came to light as a result of our review. However, according to ODNI, State was informed of ODNI's concerns with the document's sourcing when it provided the intelligence community's comments on March 4, 2008.

In addition to the time limitation, ODNI officials told us that, generally, the meaning and understanding of Section 123 as they relate to State's consultation with the intelligence community in preparing the classified NPAS annex are vague and not well defined. ODNI officials said that specific guidelines, requirements, and procedures have not been developed to establish the type or level of consultation that is expected to take place between State and the intelligence community during the development process for the classified NPAS annex. For instance, ODNI officials said they had little knowledge of the internal processes within the State INR or ISN bureaus for developing the classified NPAS annex, including how the intelligence community's comments were utilized or incorporated into subsequent versions of the document. ODNI officials said that they only communicated with State ISN through ODNI's Office of Legislative Affairs and did not work or consult directly with State ISN officials to discuss intelligence or other relevant matters related to the classified NPAS annex. Moreover, ODNI officials said that the intelligence community did not receive the final version of the classified annex until after it had been submitted to Congress.

Conclusions

In our view, State and other members of the interagency—such as DOE, NRC, and the intelligence community—have an opportunity to improve the consultation and review process for 123 agreements and accompanying documents. It is clear there was a breakdown of communication between State and NRC in the review process for the U.S.-Russia 123 agreement, which led to NRC's Commissioners not basing their votes to approve the agreement on the final version of the classified NPAS annex. We believe that improving this process is important because the U.S.-Russia 123 agreement represents a formal strengthening of ties between the civilian nuclear sectors of both countries, is an important political symbol of bilateral relations, and could lead to trade involving nuclear material, technology, and expertise with potential security and proliferation implications.

For these reasons, it is imperative that the process used to ensure adequate consultation of all interagency parties is clearly defined and strictly adhered to. In part because no formal guidelines or procedures are in place and the timing of submission of the agreement to Congress for consideration was critical, NRC Commissioners did not base their votes on the U.S.-Russia 123 agreement on an analysis of the final version of the classified NPAS annex. The lack of clarity on the role of the intelligence community and the amount of time those agencies are afforded for review and consultation also raise concerns. For all future 123 agreements, including the U.S.-Russia 123 agreement should the President choose to resubmit it, formalizing requirements for the review process could assist State and other agencies in carrying out their statutorily mandated roles.

Recommendations for Executive Action

We recommend that the Secretary of State, working with the Secretary of Energy, Chairman of the Nuclear Regulatory Commission, and Director of National Intelligence, as appropriate, take the following three actions:

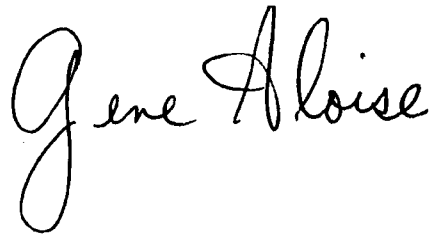
- Clarify how interagency participants will implement their statutorily assigned roles and responsibilities in the review process for 123 agreements and associated documents, such as the NPAS and classified annex that accompany 123 agreements.
- Establish written procedures to carry out the process used to develop, review, and transmit 123 agreements and associated documents. Such procedures should afford relevant members of the intelligence community an opportunity to review the final classified NPAS annex prior to any agreement's submission to Congress.
- Ensure adequate time for consultation with NRC and provide for the commission to be given the final versions of all necessary documents prior to any vote on approval for, and submission of its views and recommendations on, a 123 agreement.

Agency Comments and Our Evaluation

We provided a draft of this report to DOE, State, NRC, and ODNI. State and ODNI provided written comments, which can be found in enclosures I and II, respectively. State agreed with our recommendations and believes they can help to streamline the process of developing and coordinating nuclear proliferation assessment statements and classified annexes associated with 123 agreements in the future. ODNI neither agreed nor disagreed with our recommendations, but did provide technical comments, which we incorporated as appropriate. NRC also provided technical comments, which we incorporated as appropriate. DOE reviewed but provided no comments on our draft report.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this report. At that time, we will then send copies to interested congressional committees; the Secretaries of Energy and State; the Chairman of NRC; the Director of National Intelligence; the Director, Office of Management and Budget; and other interested parties. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-3841 or aloisee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Glen Levis (Assistant Director), Ryan T. Coles (Assistant Director), R. Stockton Butler, and William Hoehn made key contributions to this report. Additional assistance was provided by Alison O'Neill and Thomas Lombardi.

A handwritten signature in black ink that reads "Gene Aloise". The signature is written in a cursive style with a large, prominent initial "G".

Gene Aloise
Director, Natural Resources and Environment

Enclosures

List of Congressional Requesters

The Honorable Henry A. Waxman
Chairman

The Honorable John D. Dingell
Chair Emeritus
Committee on Energy and Commerce
House of Representatives

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

The Honorable Edward J. Markey
Chairman
Subcommittee on Energy and Environment
Committee on Energy and Commerce
House of Representatives

Enclosure I

Comments from the Department of State



United States Department of State

Washington, D.C. 20520

JUN 16 2009

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "U.S. -Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened," GAO Job Code 360979.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Richard Nephew, Foreign Affairs Officer, Bureau of International Security and Nonproliferation at (202) 647-7680.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Millette".

James L. Millette

cc: GAO - Stockton Butler
ISN - Eliot Kang (Acting)
State/OIG - Mark Duda

Enclosure I

Department of State Comments on GAO Draft Report

U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened

(GAO-09-743C GAO Code 360979)

The Department has reviewed GAO's draft report on the interagency process associated with the development and coordination of the Nuclear Proliferation Assessment Statement (NPAS) and the Classified Annex in support of the U.S.-Russia Agreement for Cooperation in the Peaceful Uses of Nuclear Energy (also known as a 123 Agreement), and the recommendations presented by the GAO in that report, and appreciates the opportunity to respond. The Department has no objection to these recommendations, which can help to streamline the process of developing and coordinating nuclear proliferation assessment statements and classified annexes associated with 123 Agreements in the future. The Department does not, however, believe that the deficiencies identified in the interagency consultative process prevented the State Department from carrying out its responsibilities with regard to the NPAS and classified annex for this agreement. Our specific comments on the three recommendations are as follows:

Recommendation 1: Clarify the specific roles and responsibilities of the interagency participants in the review process for 123 Agreements and associated documents, such as the NPAS and classified annex that accompany 123 Agreements.

State agrees that there would be value in discussion of the roles and responsibilities of interagency participants in the 123 Agreement review process. State will engage with the interagency to discuss the review and coordination process to that end.

Recommendation 2: Establish written procedures to carry out the process used to develop, review, and transmit 123 Agreements and associated documents. Such procedures should afford relevant members of the intelligence community an opportunity to review the final classified NPAS annex prior to any agreement's submission to the Congress.

Enclosure I

Although it is accurate that the Atomic Energy Act of 1954, as amended, does not describe how “consultations” with the Nuclear Regulatory Commission on a proposed 123 Agreement or with the Director of National Intelligence on the classified annex to the NPAS should take place, generally, such consultations have followed a fairly standard process of review and coordination. The State Department believes that process was followed in this case and was unaware of any concerns in this regard on the part of the Nuclear Regulatory Commission or the intelligence community while the review was ongoing. After engaging with the interagency to discuss roles and responsibilities in this process, State will consider working with the interagency to establish more formal procedures for future agreements.

Recommendation 3: Ensure adequate time for consultation with the NRC and provide for the Commission to be given the final versions of all necessary documents prior to any vote on approval for, and submission of its views and recommendations on, a 123 Agreement.

The Nuclear Regulatory Commission has an important consultative role in the negotiation process of these agreements and, by longstanding customary practice, in the development of the NPAS. The State Department believes that role was fulfilled in this case and was unaware of any concerns on the part of the Nuclear Regulatory Commission while the review was ongoing. The timing of Presidential submission of 123 Agreements to the Congress for review is an Administration rather than a State Department decision, but, State concurs that all agencies should be given as much time as possible, with the time constraints established by the Administration, to review associated materials. State intends to address the issue of timeliness of review as part of its engagement with the interagency described above.

Enclosure II

Comments from the Office of the Director of National Intelligence

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

Mr. Gene Aloise
Director, Natural Resources and
Environment
United States Government
Accountability Office
Washington, D.C. 20548

JUN 15 2009

Dear Mr. Aloise:

(U) This letter provides a response to your request for review of the draft report entitled "U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened", GAO-09-743C.

(U) ODNI requests the following changes to the draft report:

- 1) Page 9, third paragraph – Change "March 11, 2008." to March 4, 2008."
- 2) Page 9, third paragraph – Either remove the final sentence that begins with "Finally, State maintained"..., or alternatively leave the current final sentence and this as the new final sentence: "ODNI informed State of the sourcing issue when the comments were sent on 4 March, 2008." Regardless of the option GAO selects in this instance, the current final sentence beginning with "Finally, State maintains"... is factually incorrect as it currently reads.
- 3) Page 10, midway through the first partial paragraph,
Change this – ... "only communicated with State through the ODNI Legislative Affairs, and did not work or consult directly with State INR or ISN officials to discuss"...
To this – ... "only communicated with State ISN through the ODNI Legislative Affairs, and did not work or consult directly with State ISN officials to discuss"...

(U) Additionally, ODNI has no classification concerns over this document.

(U) If you have any questions regarding this matter, please do not hesitate to contact me at (703) 275-2473.

Sincerely,



Kathleen Turner
Director of Legislative Affairs

UNCLASSIFIED

See comment 1.

See comment 2.

See comment 3.

Enclosure II

GAO Comments

The following are GAO's comments in response to the Office of the Director of National Intelligence's letter dated June 15, 2009.

1. We have changed the date in question to March 4, 2008, per ODNI's suggestion.
2. We have inserted the sentence: "However, according to ODNI, State was informed of ODNI's concerns with the document's sourcing when it provided the intelligence community's comments on March 4, 2008" in response to ODNI's comment.
3. We have clarified our report to state: "ODNI officials said that they only communicated with State ISN through ODNI's Office of Legislative Affairs and did not work or consult directly with State ISN officials to discuss intelligence or other relevant matters related to the classified NPAS annex."

(360979)

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