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The Honorable Ileana Ros-Lehtinen
Ranking Member
Committee on Foreign Affairs
House of Representatives

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

Subject: *2010 Resubmission of the U.S.-Russia Nuclear Cooperation Agreement: Further Actions Needed by State and Other Agencies to Improve the Review of the Classified Nuclear Proliferation Assessment*

On May 10, 2010, the President resubmitted 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 nuclear cooperation agreement or the agreement) in accordance with the review requirements established under section 123 of the Atomic Energy Act of 1954 (AEA), as amended.[1] 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. The United States has 25 agreements in force for peaceful nuclear cooperation with foreign countries, the European Atomic Energy Community (EURATOM), the International Atomic Energy Agency (IAEA), and Taiwan.[2] 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.

[1]Atomic Energy Act of 1954, § 123, 68 Stat. 919, 940 as amended (codified at 42 U.S.C. § 2153).

[2]EURATOM is composed of the 27 countries of the European Union. IAEA, an independent international organization based in Vienna, Austria, is affiliated with the United Nations and has the dual mission of promoting the peaceful uses of nuclear energy and verifying that nuclear technologies and materials intended for peaceful purposes are not diverted to weapons development efforts. IAEA had 151 member states as of July 2010. Pursuant to the Taiwan Relations Act, 22 U.S.C. § 3301 et seq., and Executive Order 12143, 44 Fed.Reg. 37191 (June 22, 1979), all agreements concluded with the Taiwan authorities prior to January 1, 1979 are administered on a non-governmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation.

9/22...To OIP to Prepare Response for Chairman's Signature..Date due: Nov 5th....Cpy to: RF...COMMISSION CORRESPONDENCE...10-0435

On May 13, 2008, President Bush originally submitted the agreement to Congress with the statutorily required presidential determination that this agreement would promote, and would not constitute an unreasonable risk to, the common defense and security. President Bush determined on September 8, 2008 that his May 13, 2008 determination was no longer effective—essentially ending further congressional consideration of the agreement at that time—in response to Russian military actions against Georgia. In 2010, President Obama concluded that the situation in Georgia no longer prevented proceeding with the agreement and that the level and scope of U.S.-Russia cooperation on Iran justified resubmitting the agreement.

Section 123 of the AEA identifies the key U.S. government agencies and procedures involved in negotiating, proposing, and entering into nuclear cooperation agreements. The Department of State (State) is responsible for negotiating any proposed agreement, with the technical assistance and concurrence of DOE. State must consult with the Nuclear Regulatory Commission (NRC). It is State's consistent practice to send the proposed agreement and accompanying documents to the Department of Defense (DOD) for review.[3]

Section 123 also requires 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 summarizes relevant classified information.[4] The NPAS explains how the agreement meets the AEA nonproliferation requirements and usually includes an overview of the other party's nuclear energy program and related infrastructure, nonproliferation policies, and relations with countries of concern in the nuclear arena. For the 2010 U.S.-Russia nuclear cooperation agreement process, State prepared an unclassified NPAS and two classified annexes. State classified one annex as top-secret/sensitive compartmented information (TS/SCI) and one as secret.[5] In 2008, State prepared an unclassified NPAS and a TS/SCI annex.

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 to the President accompanied by the views of the Secretaries of State and Energy and NRC. NRC's views on the agreement are generally provided to the President in a separate letter. The President must generally submit the proposed agreement, along with the unclassified NPAS, to the relevant congressional

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[3]Under section 123, State is generally not required to solicit DOD's participation in the review of these documents. However, State officials told us that they involve DOD because it is a part of the foreign policy and national security communities and because DOD may have equities in any given nuclear cooperation agreement. DOD is required under section 123(d) to provide its views on a proposed agreement to specified congressional committees upon their request.

[4]Title 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 is now executed by the Director of National Intelligence.

[5]Information classified at the TS/SCI level generally relates to sources, methods, or activities of the telligence community. The Director of the Central Intelligence Agency establishes standards for ssifying sensitive compartmented information.

committees for their review. The President must also approve the agreement, authorize its execution (signature), and determine in writing that the proposed agreement will promote, and not constitute an unreasonable risk to, the common defense and security. 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.[6]

In June 2009, we reported on the interagency process used to develop and review the classified NPAS that accompanied the U.S.-Russia nuclear cooperation agreement in 2008.[7] We identified weaknesses in the process that State used to ensure interagency consultation during the development of the classified NPAS annex. First, there were no formal guidelines or procedures governing the interagency consultation and review process. Second, in part because of 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. Third, officials from the Office of the Director of National Intelligence (ODNI) 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. We recommended that the Secretary of State, working with the appropriate interagency partner(s), take the following three actions: (1) clarify how agencies will implement their statutorily assigned roles and responsibilities in the review process, (2) establish written procedures to manage the review process, and (3) ensure that the NRC is given adequate time and final versions of all necessary documents prior to any vote on approval for a nuclear cooperation agreement. State agreed with these recommendations.

This report responds to your request that we assess the review process for the 2010 submission of the U.S.-Russia nuclear cooperation agreement. Our objectives were to assess the extent to which (1) agencies reported having adequate time to review the NPAS and classified annexes, (2) State implemented our recommendations to develop written procedures and clarify agency roles for the 2010 review process, and (3) additional actions may be required to strengthen the review process for future nuclear cooperation agreements.

To conduct our assessment, we reviewed each agency's statutory responsibilities as defined by the AEA. We analyzed and compared the unclassified NPAS and classified

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[6]Pursuant 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 broken only 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.

[7]GAO, *U.S.-Russia Nuclear Agreement: Interagency Process Used to Develop the Classified Nuclear Proliferation Assessment Needs to Be Strengthened*, GAO-09-743R (Washington, D.C.: June 30, 2009).

annexes that accompanied the U.S.-Russia nuclear cooperation agreement in 2008 and 2010. We reviewed documents created by State and its interagency partners to manage the 2010 U.S.-Russia agreement review process as well as communications between the agencies to determine the extent to which our prior recommendations were implemented. We also reviewed procedures developed by State in August 2010, with input from interagency partners, to determine whether additional actions may be required to strengthen the review process for future nuclear cooperation agreements. We also reviewed agency documents that analyzed the agreement submitted in 2010 and its accompanying documentation. We interviewed agency officials from State, DOE, NRC, ODNI, and DOD regarding the extent to which they felt they had adequate time to review the NPAS and its classified annexes.[8] In addition, we discussed with these officials the work activities that State, their own agency, and the rest of the interagency partners followed to develop, review, and transmit the agreement and accompanying documents in 2010. We conducted this performance audit from June 2010 to September 2010 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

Officials from DOE, NRC, and ODNI reported that State provided adequate time to review the unclassified NPAS and its classified annexes accompanying the U.S.-Russia nuclear cooperation agreement resubmitted to Congress in 2010. However, DOD officials told us that the time provided was inadequate to allow all stakeholders within the department an opportunity to review the documents. State initially allotted DOD 12 days to conduct its review, but shortened the time to 8 days once the review process started. According to DOD officials, the U.S. European Command, a stakeholder that DOD considered important to its review, could not provide comments by the deadline State established. In addition, DOD officials told us they felt pressured by the National Security Council to complete the review as quickly as possible to meet the Administration's time frames for submitting the proposed U.S-Russia nuclear cooperation agreement and accompanying documents to the President and Congress. DOD officials said that the department's review was incomplete, although the department ultimately concurred with the NPAS and its classified annexes.

State did not establish procedures or clarify how interagency participants would implement their roles, as we previously recommended. The absence of procedures contributed to problems with the 2010 U.S.-Russia review process. For example, State provided DOD with a series of incomplete documents for review. Specifically, the draft NPAS and classified annexes State provided to DOD for review contained multiple instances of blank spaces, placeholder text, and highlighted text with no

[8]We asked agency officials whether they had adequate time to conduct their review. In general, agency officials reported that adequate review time depends, among other things, on the number of entities with which they coordinate their review, the amount of time needed to obtain the views of those entities, and the agency's familiarity with the content of the supporting documents.

explanation for the highlights, according to DOD officials. In addition, these officials told us that State provided neither any explanation about why the documents contained the incomplete information nor details on how the incomplete information would be finalized before the President submitted the agreement to Congress. However, according to State officials, State provided an explanation for the highlighted text contained in the TS/SCI level annex, which indicated the differences between the 2008 and 2010 versions of the document. In addition, the intelligence community's review of one of the classified NPAS annexes was incomplete because DOE's Office of Intelligence and Counterintelligence thought that such a review was not its responsibility.

In August 2010, State developed written procedures to manage the interagency review process for future nuclear cooperation agreements, but additional actions may be required to strengthen the procedures. Specifically, these procedures lack a formal mechanism, requested by DOD, for addressing conflicts between agency partners that may arise during the review of the agreement and accompanying documentation. DOD officials told us that a mechanism to address conflicts would strengthen the review process. In addition, the procedures do not clarify the role of the intelligence community. For example, the procedures do not contain a provision allowing relevant members of the intelligence community an opportunity to review the final classified NPAS annex(es) prior to any agreement's submission to Congress, as we had recommended in June 2009. As a result, we are making new recommendations, such as ensuring an appropriate consideration of any conflicting views from interagency partners about the proposed agreement and its accompanying documents prior to the submission to the President, as well as calling on State to fully implement our prior recommendations to improve the interagency review process.

We requested comments on a draft of this report from State, DOE, NRC, ODNI and DOD. We received oral comments from DOE's National Nuclear Security Administration (NNSA), NRC, State, and ODNI. DOD did not comment on our draft report. DOE/NNSA officials and NRC officials agreed with the facts, findings, and recommendations contained in the draft report. In its oral comments, State officials generally agreed with the facts presented and neither agreed nor disagreed with our recommendations. State officials noted, however, that no causal effect exists between the problems we found with the 2010 interagency review process and the absence of written procedures. In our view, had State implemented our recommendation to establish written procedures prior to the 2010 review process some of the problems we found could have been avoided, and the review process would have been conducted with greater uniformity and consistency. In its oral comments, ODNI officials disagreed with our recommendation that roles and responsibilities of ODNI and the intelligence agencies should be clarified for the review of future NPASs and their classified annex(es). ODNI commented that our recommendation indicated that State should take the lead in clarifying these roles and responsibilities. ODNI interpreted our recommendation in a way other than intended. We recommended that the Secretary of State, working in collaboration with the other interagency partners, including the Director of National Intelligence, take steps to clarify roles and responsibilities. It was not our intention to imply that this recommendation be implemented without the full consultation of ODNI and other relevant members of the intelligence community.

DOE, NRC, and ODNI Reported Having Adequate Time to Review the NPAS and Classified Annexes, but DOD's Review Was Incomplete Because of Time Constraints

State leads the interagency NPAS review process, circulates draft copies of the NPAS and classified annex(es) to participating agencies, obtains concurrence from DOE, and consults with NRC and ODNI before submitting the NPAS and classified annex(es) to the President. For the 2010 review process, DOE, NRC, and ODNI officials reported having adequate time to review the NPAS and its classified annexes. DOD officials, however, said that the department had limited time to conduct its review and was unable to include all relevant stakeholders' views because State shortened the time allotted after the review process had already started and because the National Security Council exerted pressure on DOD to complete its review as soon as possible. As a result, DOD officials said that their review was incomplete.[9]

State provided the agreement and the NPAS and classified annexes to its interagency partners—DOE, NRC, ODNI, and DOD—for review and comment in early April 2010. State requested that each agency provide comments by a given date, which varied by agency. Specifically,

- DOE officials told us that they started working with State to ensure that the NPAS accurately reflected DOE's position and views approximately 3 weeks before State formally requested the Secretary of Energy's concurrence with the U.S.-Russia nuclear cooperation agreement. DOE officials said that this early collaboration allowed DOE to obtain the Secretary's concurrence by April 23, 2010, the date requested by State.

- NRC officials told us that State provided adequate time to review the NPAS and its classified annexes. NRC officials said that on the basis of their experience with the 2008 review process, they had asked State for at least 2 weeks to review all proposed nuclear cooperation agreements. According to NRC officials, State provided NRC with the 2 weeks they had requested to review the documents before the NRC Commissioners voted to approve the agreement on April 22, 2010.

- ODNI officials told us that State gave the intelligence community 1 week to review the draft NPAS and its classified annexes. ODNI coordinates and manages the intelligence community's review of the NPAS and classified annex(es) by circulating the documents to multiple intelligence organizations and consolidating their comments into a single response to State. According to ODNI officials, the amount of time was reasonable. This is in contrast to the findings of our 2009 report, in which we stated that ODNI officials had raised concerns that the limited comment period did not allow for a substantive analysis of the classified annex.[10] ODNI officials cited two reasons that the time State provided in 2010 to complete the analysis was adequate: (1) the intelligence community conducted the bulk of its analysis when intelligence agencies previously reviewed the NPAS and its

[9]We did not assess DOD's role in reviewing the NPAS and its classified annex in our June 2009 report because we were not made aware of DOD's role in that process at that time.

[10]GAO-09-743R.

classified annex in 2008, and (2) there were few substantive differences between the 2008 and 2010 TS/SCI NPAS annexes.[11] ODNI officials characterized the intelligence community's comments on the 2010 NPAS and its classified annexes as focused on ensuring the accuracy of the new information.

- DOD officials told us that State did not provide adequate time for a comprehensive review of the agreement submitted in 2010 and its accompanying documentation. According to DOD officials, State transmitted these documents for review on April 9, 2010. State officials initially requested that DOD provide comments by April 20, 2010. However, State officials sent DOD officials an e-mail message on the morning of April 16, 2010, directing DOD to provide its comments by 2 p.m. that same day. State also said that approval of the NPAS and classified annexes would be assumed if comments were not received within 24 hours. As such, State shortened the amount of time DOD had to conduct its review from 12 days to 8 days once the review process started. DOD typically sends proposed nuclear cooperation agreements and any accompanying documentation to various stakeholders within DOD for review. For this agreement, these stakeholders include the U.S. European Command (EUCOM)—the pertinent combatant command—whose area of responsibility covers Russia.[12] EUCOM could not provide comments by the deadline established by State. As a result, DOD's review was incomplete, according to DOD officials, even though DOD concurred with the findings presented in the NPAS and its classified annexes and cleared the documents accompanying the agreement before its submission to the President and Congress. In addition, DOD officials told us that they felt pressure to quickly review the agreement and its accompanying documentation after receiving telephone calls from officials of the National Security Council urging them to finish their review as quickly as possible. In the DOD officials' view, the outcome of the review process was predetermined—the Administration had already decided that the agreement would go forward and be submitted to Congress.

State Had Not Implemented Our Recommendations to Develop Written Procedures and Clarify Agency Roles Prior to the 2010 Review Process

State did not implement our recommendations to establish written procedures and clarify agency roles to manage the interagency review process despite having 10 months from the issuance of our report to the start of the interagency review in April 2010.[13] In the absence of written procedures, we found continuing problems with State's management of the interagency review process. For example,

- State provided incomplete documents for DOD's review. Specifically, the draft NPAS and classified annexes State provided to DOD contained multiple

[11]We reviewed both the 2008 and 2010 versions of the TS/SCI annex and found few substantive changes between the two versions.

[12]DOD operates geographic combatant commands that conduct missions and activities within assigned areas of responsibility. Combatant commands are responsible for a variety of functions, from the deployment of forces for a range of missions from humanitarian assistance to combat operations, to providing administration and support, including control of resources and equipment and training.

[13]GAO-09-743R.

instances of blank spaces, placeholder text, and highlighted text with no explanation for the highlights, according to DOD officials. In addition, these officials told us that State provided neither any explanation of why the documents contained the incomplete information nor details on how the incomplete information would be finalized before the President submitted the agreement to Congress. DOD officials said that it was difficult to be put in a position to review the agreement and its accompanying documents based on incomplete information, and without the benefit of formal procedures. However, according to State officials, State provided an explanation for the highlighted text contained in the TS/SCI level NPAS annex, which indicated the differences between the 2008 and 2010 version of the document. DOD officials told us that the review process, managed by State, was too lax and should have been more rigorous—commensurate with the importance of the U.S.-Russia agreement. DOD officials told us that a more formal process, including written procedures, would help them manage the department's review process.

- ODNI officials told us that the intelligence community was not provided the opportunity to review the final version of the 2010 NPAS and its classified annexes prior to their submission to Congress. As a result, it is unclear to us whether the final 2010 NPAS and its classified annexes adequately incorporated the intelligence community's views. In our 2009 report, we recommended that State provide relevant members of the intelligence community an opportunity to review these documents prior to any agreement's submission to Congress.[14]

- The intelligence community did not conduct a comprehensive review of the 2010 secret NPAS annex. According to ODNI officials, ODNI distributed the NPAS and its classified annexes to the Central Intelligence Agency, Defense Intelligence Agency, State's Bureau of Intelligence and Research, National Geospatial-Intelligence Agency, National Security Agency, and DOE's Office of Intelligence and Counterintelligence (DOE-IN) for review and comment. ODNI officials told us that they instructed the intelligence agencies to review and provide comments on all three documents: the unclassified NPAS, the secret annex, and the TS/SCI annex. DOE-IN officials confirmed ODNI's instructions. However, DOE-IN officials told us that they did not review the secret NPAS annex because their organization typically only reviews TS/SCI documents and that the TS/SCI and secret NPAS annexes contained similar information. However, according to State officials, and as confirmed by our own analysis, the TS/SCI and secret NPAS annexes address distinct topics. Because DOE-IN neglected to review the secret NPAS annex, the intelligence community's review of the agreement's accompanying documentation was incomplete.

NRC developed procedures to manage its review of nuclear cooperation agreements in the absence of State's action to develop written procedures for the interagency review process. These procedures address roles, responsibilities, and actions that need to be completed at each milestone in the review process. For example, the

[14]GAO-09-743R.

procedures state that before the Commissioners vote to approve a nuclear cooperation agreement, (1) NRC's Office of International Programs, with assistance from five other NRC offices, prepares an analysis of the proposed agreement and its accompanying documentation, and (2) the Office of International Programs consults with State to ensure that State has provided NRC with versions of all required documents that are identical to those that will be provided to the President. NRC used these procedures, developed in consultation with State, to guide its review of the U.S.-Russia nuclear cooperation agreement resubmitted in 2010. Both NRC and State officials attributed the increased collaboration between the two agencies during the 2010 review process, in part, to these procedures. One particular problem that was resolved was the poor marking of documents provided by State to NRC during the prior U.S.-Russia review process.[15] In 2010, State clearly marked draft documents as such and provided NRC with the final versions of the documents to ensure the Commissioners based their vote on the same documents that State provided to the President.

State Recently Developed Procedures to Guide Future Interagency Reviews, but They Lack a Mechanism to Consider Conflicting Views and Do Not Clarify ODNI's Role

When we met with State officials on June 24, 2010 to begin our review, they told us that they had not developed procedures to manage the interagency process by which nuclear cooperation agreements and accompanying documentation are developed, reviewed, and transmitted. State officials said, however, that written procedures, accepted by all interagency stakeholders, would be beneficial to the review process. They also told us that developing such procedures was not a priority because there were more pressing issues to address. At a subsequent meeting on July 26, 2010, State officials told us that they had drafted a set of procedures to guide the interagency review process. State provided these procedures to DOE, DOD, and NRC officials for their comment and approval, and officials at all three agencies approved them. However, we found, based on our review of documentation provided by State, that ODNI officials were not provided an opportunity to review or approve the procedures. On August 18, 2010, more than 3 months after submitting the U.S.-Russia nuclear cooperation agreement to Congress, State provided us with a copy of the finalized procedures.

State's procedures identify a step-by-step process by which nuclear cooperation agreements and accompanying documentation are to be developed, reviewed, and transmitted. For example, the procedures identify the documents that State will provide to specific offices within each agency for its review. State's procedures inform interagency partners that they can expect 3 to 4 weeks to review the documents (absent a specific deadline from the National Security Council) and indicate that State will transmit the documents to the Secretary of Energy for formal concurrence after all comments are received. The specific agencies and offices identified by State as part of the interagency clearance process are as follows:

[15]See GAO, *Managing Sensitive Information: Actions Needed to Prevent Unintended Public Disclosures of U.S. Nuclear Sites and Activities*, GAO-10-251 (Washington, D.C.: Dec. 15, 2009).

- DOE/NNSA's Office of Defense Nuclear Nonproliferation and Office of Nonproliferation and International Security;
- DOE's Offices of Nuclear Energy, General Counsel, and Intelligence;
- NRC's Office of International Programs;
- DOD's Office of the Secretary of Defense/Division of Combating Weapons of Mass Destruction;
- DOD's Office of the Joint Chiefs of Staff/J-5 Division (Strategic Plans and Policy); and
- National Security Council.

These procedures, however, do not fully address all concerns raised by interagency partners during their review of the draft procedures. DOD officials told us that the draft procedures assume that all interagency partners will agree with the findings and analysis contained in the NPAS and its classified annex(es). DOD officials requested that State consider revising the procedures to include a mechanism for resolving differences among interagency partners should they arise. However, State's final procedures do not contain the dispute resolution mechanism requested by DOD, which may hinder interagency collaboration and limit the robustness of the analysis contained in the NPAS and its classified annex(es) for future nuclear cooperation agreements.

In addition, the procedures do not clarify the role of ODNI. Even though the procedures contain a provision that State will consult with ODNI to ensure the accuracy and completeness of the NPAS and its classified annex, the procedures do not provide specific information on the processes involved in or frequency of the consultation. For example, the procedures do not include a provision that allows the relevant members of the intelligence community an opportunity to review the final classified NPAS annex prior to any agreement's submission to Congress, although we had recommended such a provision in June 2009. Furthermore, we reported in October 2005 that to enhance collaboration, agencies should work together to define and agree on their respective roles and responsibilities, including specifying who will do what tasks and how the agencies will organize their individual and joint efforts.[16] State's recently developed procedures may not include a necessary level of specificity to ensure full collaboration with the intelligence community. For example, the procedures list DOE-IN as being involved in the review process, but they do not specify what tasks DOE-IN needs to complete to satisfy its responsibility as a key reviewer within the intelligence community's overall assessment of the NPAS and classified annexes. Given DOE-IN's uncertainty about its role in reviewing the 2010 secret NPAS annex, the existing procedures do not help clarify its role in reviewing future documents accompanying proposed nuclear cooperation agreements.

[16]See GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington D.C.: Oct. 21, 2005).

Conclusions

The proposed U.S.-Russia nuclear cooperation agreement represents a formal strengthening of ties between the civilian nuclear sectors of the United States and Russia, and the proposed agreement carries potentially significant security and nuclear proliferation implications. As such, it is critical that the process employed to review all key supporting documents accompanying the proposed agreement allow interagency partners adequate time, be managed in accordance with established procedures, and clarify the roles and responsibilities of all agencies involved. While State generally provided its interagency partners with more time to review the agreement and its accompanying documentation in 2010 than in 2008, DOD officials said that State did not provide them with adequate time to conduct a comprehensive review. Specifically, DOD officials said that they wanted to send the agreement and its accompanying documentation to EUCOM for its review, but this was not possible given the review time allotted by State. State did not develop procedures to manage the 2010 review process as we recommended in our 2009 report. As a result, we found continuing problems with the review process, such as an incomplete review of the secret NPAS annex by the intelligence community, that could have been avoided. While it is important to note that State recently established procedures to manage future nuclear cooperation agreement reviews, they were not available to guide the 2010 interagency review of the U.S.-Russia agreement and do not clarify the role and responsibilities of the intelligence community, specifically ODNI and DOE-IN. Furthermore, the procedures do not contain a mechanism to ensure consideration of any conflicting views from interagency partners should they arise. Without such a mechanism, the procedures may not be as strong as they could be to better ensure interagency collaboration and a robust, transparent review process.

Recommendations for Executive Action

We are making three recommendations, as follows:

We recommend that the Secretary of State, working with the Secretary of Energy, the Secretary of Defense, the Chairman of the Nuclear Regulatory Commission, and the Director of National Intelligence, ensure adequate time for consultation (to be determined by State and its partner agencies) with all parties that participate in the review of a nuclear cooperation agreement prior to its submission to the President and Congress.

We further recommend that the Secretary of State, in collaboration with the Secretary of Energy, the Secretary of Defense, the Chairman of the Nuclear Regulatory Commission, and the Director of National Intelligence, take steps to strengthen the written procedures governing nuclear cooperation agreements. Specifically, these procedures should contain provisions that

- ensure appropriate consideration of any conflicting views from interagency partners about the proposed agreement and its accompanying documents prior to the submission to the President and

- clarify the role and responsibilities of ODNI and the intelligence agencies involved in reviewing every future NPAS and its classified annex(es) and provide that the relevant members of the intelligence community review the final NPAS and its classified annex(es) prior to any agreement's submission to the President and Congress, unless the members of the intelligence community determine that such a review is not needed.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from DOE, NRC, State, ODNI and DOD. We received oral comments from DOE's National Nuclear Security Administration (NNSA), NRC, State, and ODNI. DOD did not comment on our draft report.

On September 14, 2010, we met with officials from DOE/NNSA's Office of International Regimes and Agreements, including a Senior Policy and Regulatory Advisor and a Foreign Affairs Specialist. These officials agreed with the facts, findings, and recommendations contained in our draft report. On September 15, 2010, we received oral comments from NRC's Executive Director for Operations. He said that the Commission agreed with our recommendations.

On September 13, 2010 we met with Foreign Affairs Officers from State's Bureau of International Security and Nonproliferation, an Attorney in State's Office of Legal Advisor, and a Legislative Management Officer from State's Bureau of Legislative Affairs, who provided oral comments. State officials generally agreed with the facts presented in this report, and neither agreed nor disagreed with the report's recommendations. In addition, State officials provided technical comments, which we incorporated as appropriate.

State officials also clarified several points we made in the report. First, State officials said that although DOD told us that the department's review of the NPAS and classified annex was incomplete, DOD did in fact concur with the findings presented in the NPAS and its classified annexes and cleared on the documents that were submitted to the President and Congress. We have added information to the report to reflect State's comment. Second, State officials told us they were not made aware of DOD's concerns about the lack of a mechanism to consider conflicting views in State's recently established procedures. The information we reported regarding DOD's concerns were provided to us directly by DOD officials during an interview on August 11, 2010. Third, State officials told us that they did provide DOD officials with guidance—contained in the e-mail message transmitting the NPAS and its classified annexes for interagency review—about the content of the documents they were asked to review. Specifically, State officials told us that they highlighted text in the 2010 TS/SCI level NPAS annex to indicate text that differed from the 2008 TS/SCI level annex. We are including information in the report that reflects State's comments on this matter. Fourth, State officials commented that the department does not have the ability or authority to prescribe how communications within other agencies regarding the review of nuclear cooperation agreements and accompanying documentation should take place. Regarding this point, in our view, the purpose of establishing written procedures is to develop a common framework by which all responsible agencies can coordinate their efforts to review the NPAS and its

classified annexes. While we recognize that State does not have authority to prescribe exactly how each agency should conduct its own internal review, an established set of written procedures, agreed to by all interagency partners, can help facilitate and coordinate a more effective and efficient process. Finally, State officials commented that no causal effect exists between the problems we found with the 2010 interagency review process and the absence of written procedures. We disagree with State's comment. In our view, had State implemented our recommendation to establish written procedures prior to the 2010 review process some of these problems could have been avoided. For example, instructions in an e-mail to another agency are not a substitute for instituting procedures to ensure greater uniformity, rigor and consistency in the nuclear cooperation agreement review process that includes input from multiple agencies within tight timeframes.

On September 14, 2010 we received oral comments from ODNI's Office of Legislative Affairs. ODNI officials disagreed with our recommendation that roles and responsibilities of ODNI and the intelligence agencies should be clarified for the review of future NPASs and their classified annex(es). ODNI officials commented that our recommendation stated that the Department of State should take the lead in clarifying the roles and responsibilities of the intelligence community. In ODNI's view, it should be responsible for defining and specifying coordination without any new procedures governing the review process. In addition, ODNI officials stated that they do not believe that ODNI and the relevant members of the intelligence community need to review the final NPAS and its classified annex(es) prior to any agreement's submission to the President and Congress.

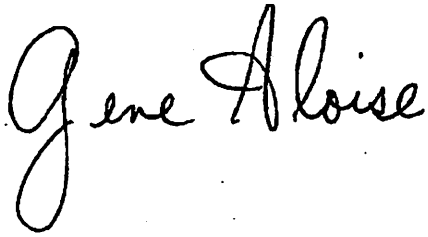
ODNI has interpreted our recommendation in a way other than intended. We recommended that the Secretary of State, working in collaboration with the other interagency partners, including the Director of National Intelligence, take steps to clarify roles and responsibilities in reviewing future NPAS and classified annex(es). It was not our intention to imply that our recommendation to clarify roles and responsibilities be implemented without the full consultation of ODNI and other relevant members of the intelligence community. In addition, we believe that allowing ODNI to review the final version of the NPAS and classified annex(es) before they are submitted to the President and Congress would help ensure that these documents included all relevant intelligence information. In our view, this is a matter of good government, and a practice that would not be onerous for the intelligence community to undertake given the national security and nuclear proliferation concerns associated with many of these agreements.

ODNI also commented that according to statements DOE-IN provided to ODNI, DOE intelligence analysts focused on the TS/SCI level NPAS annex but also reviewed the unclassified NPAS and the secret level annex for accuracy and completeness. This differs from the information DOE-IN officials provided to us at our July 26, 2010 meeting. Specifically, DOE-IN officials stated on multiple occasions during that meeting that their responsibility was to review only the TS/SCI level annex, and in

reviewing a draft of our report, DOE/NNSA officials said they agreed with the facts presented. ODNI also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees; Secretaries of Energy, Defense, and State; Chairman of NRC; Director of National Intelligence; 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 staff 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), Joshua Akery, Patrick Bernard, and Alisa Beyninson made key contributions to this report. Additional assistance was provided by Jonathan Kucskar and Ben Shouse.



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Director, Natural Resources and Environment

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