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July 12, 1978

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Date of Declassification 10/24/2003

SECY-78-313B

COMMISSIONER ACTION

For: The Commissioners

From: James R. Shea, Director
Office of International Programs

Thru: Executive Director for Operations *[Signature]*

Subject: PHYSICAL SECURITY ASSURANCES FOR U.S. NUCLEAR EXPORTS

Purpose: Commission review of correspondence proposed by the Department of State to obtain physical security assurances from recipients of US nuclear exports.

Discussion: The Commission decided, at its meeting of July 6 on SECY 78-313 and 78-313A, that the Department of State should be advised of the Commission's preference that the proposed note to the Supplier Group countries contain a request for a specific assurance that INFCIRC/225 physical security criteria will be maintained with respect to Category I material exported prior to enactment of the NNPA (or derived from material and equipment exported prior to enactment).

IP presented this Commission position to the State Department on July 6. The staff has been advised that the Department of State (Dr. Nye) objects to inclusion of such a request in the note, for the following reasons:

- such a retroactive assurance is not required by the NNPA;
- export recipients have shown particular sensitivity to unilateral escalation of US requirements, and insisting on a retroactive written assurance not required by the NNPA could prejudice our primary

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G.G. Oplinger
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this memorandum.

U.S. NRC Declassification Review	
1 ST REVIEW - DATE: <u>6/9/2025</u>	DETERMINATION [CIRCLE NUMBER(S)]
REVIEWER <u>3591</u>	1. CLASSIFICATION RETAINED
AUTHORITY: <input type="checkbox"/> DC <input checked="" type="checkbox"/> DD	2. CLASSIFICATION CHANGED TO: _____
2 ND REVIEW - DATE: <u>6-9-2025</u>	3. CONTAINS NO NRC CLASSIFIED INFO
REVIEWER <u>3410</u>	4. COORDINATE WITH: _____
AUTHORITY: <input checked="" type="checkbox"/> DD	5. DECLASSIFIED
	6. CLASSIFIED INFO BRACKETED
	OTHER (SPECIFY): <u>DOS - NORSE determination</u>

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objective with regard to prospective exports.

Informal discussion with Department of State officials suggests that the Department may be prepared to consider the inclusion of additional talking points which would seek oral confirmation that in fact INFCIRC/225 standards are being applied to U.S.-origin Category I material supplied in the past, and that it is the policy of these governments that these levels of protection will be maintained. This approach is more acceptable to State Department officials because of the possibly crucial difference between seeking oral confirmation of what we understand to be the existing situation, and seeking a new written assurance.

In light of the above developments and the views of the Commissioners on seeking further assurances expressed at the July 6 meeting, the staff recommends that we now attempt to obtain the Department's agreement to an oral confirmation covering this point.

The latest draft of the proposed cable to NSG capitals, incorporating the changes recommended by the staff in SECY 78-313A, is at Appendix A. The staff recommends changes to paragraph 7.F of this draft so that it would read as at Appendix B. This language has been discussed with State (Michael A. Guhin) and is considered acceptable at that level, but is subject to review by Mr. Nosenzo and Dr. Nye upon their return to Washington at the end of this week.

While it was not specifically addressed at the Commission's July 6 meeting, a similar question arises with respect to the proposed letter to be sent by DOE to the Embassies of an initial group of non-Supplier Group countries. The staff believes that it is at least as important to ensure the application of INFCIRC/225 standards to Category I material previously shipped to these countries as to the NSG countries, and that the oral talking point covered by paragraph 7.F of the telegram should be made to the Embassies of these countries as well as in the NSG capitals.

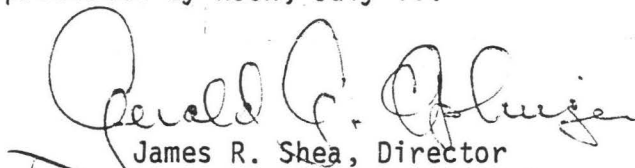
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Recommendation: The staff recommends that the Commission authorize the suggested response to the Department of State at Appendix C, requesting that (1) paragraph 7.F of the telegram to NSG capitals be revised to read as at Appendix B and (2) the letter to non-NSG countries be handed to local Embassy representatives, by the Department of Energy, while making the same oral request described in the revised paragraph 7.F.

In view of the urgency of this matter and Dr. Nye's imminent return to Washington, Commissioners' views would be appreciated by noon, July 13.


James R. Shea, Director
Office of International Programs

Enclosures:

1. Appendix A - Proposed State Dept. note to Supplier Group countries
2. Appendix B - Proposed revision to paragraph 7.F of note
3. Appendix C - Proposed response to State Department

Commissioners' comments should be provided directly to the Office of the Secretary by Noon, Thursday, July 13, 1978.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT 10:00 a.m., July 13, 1978, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION

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APPENDIX A

DRAFT CABLE TO:

ACTION: AMEMBASSY PARIS
AMEMBASSY BONN
AMEMBASSY THE HAGUE
AMEMBASSY ROME
AMEMBASSY LONDON
AMEMBASSY BRUSSELS
AMEMBASSY STOCKHOLM
AMEMBASSY TOKYO
AMEMBASSY OTTAWA
AMEMBASSY BERN
AMEMBASSY CANBERRA

INFO: VIENNA, BRASILIA, HELSINKI, ATHENS, OSLO, MANILA,
LISBON, TAIPEI, SEOUL, MADRID, COPENHAGEN
LUXEMBOURG, DUBLIN, BELGRADE, BUCHAREST, MOSCOW

SUBJECT: CONFIRMATION OF PHYSICAL SECURITY PROTECTION TO BE ACCORDED
U.S. NUCLEAR EXPORTS

REF: Brussels 11272 (NOTAL)

USEC, ALSO FOR EMBASSY, USIAEA ALSO FOR EMBASSY

1. Long-standing US policy that significant nuclear exports be subject to adequate physical security has been implemented primarily on the basis of visits to recipient countries by US (DOE-NRC) review teams and other information exchanges, in cooperation with host countries, and of the recommended levels and measures for the physical protection of nuclear material in use, transit, and storage contained in IAEA document INFCIRC/225/Revision 1, "The Physical Protection of Nuclear Material."
2. The recently enacted Nuclear Non-Proliferation Act has codified this policy. It also directs that the NRC, in consultation with Executive Branch agencies, publish regulations establishing levels of physical protection which are no less strict than those established by any international guidelines to which the US subscribes and which in its judgment will provide

adequate physical protection for US supplied nuclear material or facilities or derived special nuclear material. These regulations, as part of the NRC export/import regulations (10 CFR Part 110) were published and took effect on May 19. Text of physical protection regulations in Para 13. (Copy of entire regulations pouched separately.) Addressees will note that these regulations call for written assurances from recipient countries that adequate physical security measures be maintained which provide as minimum protection comparable to that set forth in INFCIRC/225/Rev. 1.

3. We are particularly concerned with respect to Category I quantities of nuclear material (quantities and types of material which would be capable of making a significant contribution to a nuclear weapon). For several years, it has been the US practice not repeat not to export such material until we had completed a review to assure that physical security measures at least equivalent to those of INFCIRC/225 would be maintained. (This review includes a US physical security team visit to the country involved and, normally, to representative facilities utilizing such material as well.) In the Executive Branch judgment, each of the action addressee nations already meets INFCIRC/225 standards for all Category I material previously supplied by the US.

4. Since the Non-Proliferation Act and NRC regulations essentially embody Nuclear Supplier Group (NSG) obligations, we are using approach to certain NSG

members and other countries which have explicitly endorsed NSG Guidelines (Australia) on the basis of these obligations. We hope that this approach will minimize sensitivities to request and requirements of new law. (Written assurances from countries outside NSG will be sought by letter from the Department of Energy to embassies of such countries, text in para 12 below.)

5. The US currently is prepared, if requested, to give a similar assurance that physical security measures at least equivalent to those of INFCIRC/225 will be maintained. Such assurance would be unequivocal with respect to Category I material. However, until such time (probably early 1979) as the NRC through rulemaking procedures requires full compliance by licensees, it will be necessary to condition our assurance for Category II and III material. If the licensee does not already apply physical security measures meeting INFCIRC/225 guidelines for Category II and III material and is unwilling to do so voluntarily at the NRC's request as a condition of an import license, the exporting nation would be so advised. The latter could then choose not to make the export in question until the NRC was in a position to impose full compliance.

6. ACTION REQUESTED: That action addressees seek and provide to Department as soon as possible, written confirmation from host countries that physical security measures providing a level of protection comparable to that set forth in IAEA document INFICRC/225/Rev. 1 will be maintained with respect to nuclear materials and facilities exported from the United States to host countries and with respect to nuclear material used in or produced through the use of such material and facilities. Talking points and proposed note follow.

7. In presenting note (para 8) to host countries, embassies should draw on talking points below:

- A. Both the United States and the Government of _____ recognize the need to ensure that their nuclear exports and derived special nuclear material are subject to adequate physical protection to prevent theft or unauthorized use.
- B. This recognized need is reflected in the obligations under the Nuclear Supplier Guidelines to which both our countries subscribe.
- C. Paragraph 3 of the Guidelines concerns the physical protection to be accorded nuclear materials and facilities. The Guidelines include agreed "Criteria for Levels of Physical Protection" consistent with IAEA Document INFCIRC/225/Revision 1.
- D. The Guidelines also clearly note that the implementation of measures of physical protection in a recipient country is the responsibility of the government of that country.
- E. As you know, the United States obligations under the Supplier Guidelines have been codified in our law and export regulations.
- F. The United States has for several years been making the maintenance of adequate physical security a condition of export for all Category I material. The NRC also has established regulations for US licensees calling for physical security measures which more than meet the guidelines of INFCIRC/225 for this type of material. As

a result, it is our understanding that all such material in both of our countries currently meets this criterion.

- G. Consistent with its obligations under the Supplier Guidelines, the United States Government would appreciate early written confirmation that physical protection measures providing as a minimum a level of protection comparable to that set forth in IAEA document INFCIRC/225/Rev. 1 will be maintained with respect to nuclear materials and facilities exported to your country from the United States and with respect to nuclear material used in or produced through the use of such material and facilities.
- H. It should be noted that receipt of such confirmation would expedite U.S. review of export license applications.
8. Proposed Note for host countries:

"The Embassy of the United States of America presents its compliments to the Government of _____ and has the honor to refer to the Nuclear Supplier Group Guidelines, to which the Government of _____ and the United States subscribe, with particular reference to the agreed "Criteria for Levels of Physical Protection."

"Among other things, Para 3 of the Guidelines notes that the implementation of measures of physical protection in a recipient country is the responsibility of the government of that country. In this regard, and consistent with its obligations under the Supplier Guidelines, the

United States Government would appreciate your written confirmation that physical security measures providing as a minimum a level of protection comparable to that set forth in IAEA document INFCIRC/225/Rev. 1 will be maintained with respect to nuclear materials and facilities exported to your country from the United States and with respect to nuclear material used in or produced through the use of such material and facilities."

9. FOR LONDON: As you know, we have been informally approached by the Embassy here on the matter of providing reciprocal assurances on maintaining adequate physical protection. In presenting note, you should clearly indicate that the USG will provide reciprocal assurances, pursuant to para. 5 above.

0. FOR OTTAWA: In the exchange of notes with Canada, both the U.S. and Canada noted that they have committed themselves to ensure that adequate physical protection is applied to all such material and equipment transferred between the countries, taking into account the measures set forth in INFCIRC/225/Revision 1, and that this is an enduring commitment. The new law and regulations pursuant to it call for a slightly different formulation which remains, in substance, essentially the same commitment. In presenting note, therefore, the confirmatory nature of the request should be stressed.

1. FOR ALL ACTION ADDRESSEES: In order to avoid any possibly ambiguity under the law and NRC regulations, it is important that confirmation clearly reflect the actual language in the note.

12. For all info addressees except Belgrade, Bucharest and Moscow, following is text of DOE letter being sent to host countries' embassies in Washington:

Dear _____:

It has been long-standing United States policy to condition exports of significant quantities of special nuclear material upon a determination that the proposed recipient country's physical protection program was adequate to minimize the possibility of theft or unauthorized use of nuclear material supplied by the United States. Such determinations have been based primarily on visits to a recipient country by U.S. technical review teams and other information exchanges, and on evaluation of the national physical security program relative to the recommended levels and measures for physical protection of nuclear material in use, transit, and storage contained in IAEA Document INFCIRC/225/Revision 1, "The Physical Protection of Nuclear Material."

The Nuclear Non-Proliferation Act of 1978 (Public Law 95-242), which came into effect on March 10, has confirmed this long-standing policy. In this regard, the Act provides that one of the criteria which will govern U.S. exports of source, special nuclear material, production and utilization facilities and any sensitive technology is that

adequate physical security measures will be maintained with respect to such material or facilities and any special nuclear material used in or produced through the use thereof. The Act further provides that such physical security measures will be deemed adequate if they provide a level of protection equivalent to that required by applicable regulations to be published by the Nuclear Regulatory Commission.

Following consultation with appropriate Executive Branch agencies, the Nuclear Regulatory Commission published these regulations on May 19, 1978, effective as of that date. They provide, among other things, for a written assurance from a recipient country that physical security measures providing as a minimum protection comparable to that set forth in INFCIRC/225 will be maintained. The requirement for such an assurance recognizes that implementation of such physical security measures is the responsibility of the recipient country.

Following passage of the Nuclear Non-Proliferation Act, we have normally been requesting a physical security assurance of this nature as a part of the Executive Branch processing of individual export license applications. However, we believe that you may wish to provide such assurance on a generic basis, thereby, eliminating the need to do it for each license application. If this is your preference, would you please provide your written confirmation that physical protection measures providing as a minimum a level of protection comparable to

that set forth in International Atomic Energy Agency publication INFCIRC/225/Revision 1 will be maintained with respect to all nuclear materials and facilities exported to your country from the United States and to any special nuclear material used in or produced through their use.

13. Pertinent excerpts from recently published NRC regulations:
 - A. Section 110.42 sets forth the statutory criteria governing the review of specific license applications for the export for peaceful nuclear uses of production or utilization facilities, special nuclear material, and source material. Section 110.42(a)(3) sets forward the criterion that "adequate physical security measures will be maintained with respect to such facilities or material proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in section 110.43."
 - B. Section 110.43 Physical Security Standards.
 - (a) Commission determinations on the adequacy of physical security programs in recipient countries for Category I quantities of nuclear material (see Appendix C) will be based upon:

(1) Review of the physical security program established by the recipient country and of the implementation of the national requirements as considered through country visits and other information exchanges to ensure that physical security measures provide as a minimum protection comparable to that set forth in IAEA publication INFCIRC/225/Revision 1 entitled "The Physical Protection of Nuclear Material"

(2) Written assurances from the recipient country or-group of countries that physical security measures providing as a minimum protection comparable to that set forth in INFCIRC/225 will be maintained.

(3) The Commission's determination may be based upon a country-wide finding rather than upon case-by-case analysis. The Commission will reexamine a determination whenever there are changed circumstances within a country that might reduce the effectiveness of its physical security program.

(b) Commission determinations on the adequacy of physical security programs in recipient countries for Category II and III quantities of material will be

based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing as a minimum protection comparable to that set forth in INFCIRC/225 will be maintained.

(c) Commission determinations on the adequacy of physical security programs in recipient countries for exported facilities will be made in accordance with the categories of material in use or in storage at the exported facilities and will be based on available relevant information and written assurances from the recipient country or group of countries that physical security measures providing as a minimum protection comparable to that set forth in INFCIRC/225 will be maintained.

C. Appendix C of NRC regulations will be included with copy of regulations being pouched separately. In brief, the appendix essentially sets forth those categories as set out in IAEA INFCIRC/225 (with 2 kilograms or more of unirradiated plutonium or uranium-233 and 5 kilograms or more of uranium enriched to 20% or more in the isotope uranium-235 constituting

Category II or III depending on the actual quantity and type of material involved).

14. FOR BELGRADE: Need for subject assurances was raised by Department rep Guhin with Kljun during recent discussions on Krsko fuel license application. Kljun indicated that he foresaw no objection to GOY's providing such a written confirmation. DOE will be approaching Yugoslav Embassy in near future with request similar to those being made to other non-supplier group nations. At appropriate opportunity you may wish to advise Kljun that DOE request will be forthcoming shortly.

15. FOR BUCHAREST: Subject assurances will not repeat not be required for pending export license application for highly enriched uranium for research reactor. However, DOE will be approaching Romanian Embassy with request that GOR provide assurances to cover future exports of equipment and material.

APPENDIX B

7.F The written assurance requested in our note is intended to be prospective, covering material supplied by the U.S. in the future. As noted previously, adequate physical security has been a long-standing condition for export of all Category I material from the U.S. The NRC has established regulations for U.S. licensees requiring physical security measures which more than meet the standards of INFCIRC/225 for this type of material. It is our understanding that it is the policy of both of our countries to maintain protection in accordance with INFCIRC/225/Rev. 1 criteria, particularly for all Category I Material, regardless of when supplied, and we assume you share this understanding. We would appreciate your confirmation of this understanding, particularly with respect to Category I material. (FYI. While we are not seeking a new assurance for material previously supplied, verbal confirmation of our understanding of existing situation that protection of such material meets INFCIRC/225 criteria, would be appreciated. It is recognized that such oral confirmation may await program level discussions. Posts are requested to report host government responses to this point. End FYI)

APPENDIX C

Mr. Louis V. Nosenzo
Deputy Assistant Secretary for Nuclear
Energy and Energy Technology Affairs
OES/NET
U.S. Department of State
Washington, D.C. 20520

Dear Mr. Nosenzo:

By a memorandum from Mr. Michael A. Guhin to NRC/IP dated June 12, 1978, your office forwarded a proposed cable to the Nuclear Supplier Group capitals, and a proposed letter to certain non-NSG Embassies, for our review and comment.

While the Commission generally concurs in this approach, it believes that this occasion should be used to obtain confirmation of our understanding that physical protection measures in accordance with INFCIRC/225 are and will continue to be applied to U.S.-origin Category I materials supplied prior to the enactment of the NNPA, or to materials derived from such supply, particularly Category I materials. I am attaching a proposed revision of paragraph 7.F of your draft cable, which would instruct the U.S. missions concerned to seek such confirmation in delivering the U.S. notes.

The Commission believes that the same confirmation should be sought from the non-NSG countries who receive the proposed Department of Energy letter, and believes this could be accomplished by having the Department of Energy hand the letters to local Embassy representatives, while making the same verbal points contained in the revised paragraph 7.F.

Please contact Mr. Shea of our International Programs office if you should have any further questions.

Sincerely,

Lee V. Gossick
Executive Director for Operations

APPENDIX C