

May 13, 1998

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: IMPLEMENTATION OF NEW INTERNATIONAL ATOMIC ENERGY AGENCY SAFEGUARDS MEASURES IN THE UNITED STATES

PURPOSE:

To inform the Commission of responsibilities for implementation of strengthened safeguards measures assigned to the Nuclear Regulatory Commission by the International Atomic Energy Agency (IAEA) Steering Committee. Implementation responsibilities for the new IAEA safeguards measures are documented in a September 25, 1997, memorandum to Committee members and is provided as Attachment 1. Unless the Commission directs otherwise, staff will formally accept the responsibilities on behalf of the Commission, through issuance of Attachment 2, on the condition that the Executive Branch successfully arranges for the necessary authorities and the required resources.

BACKGROUND:

Culminating years of related support and encouragement, the U.S. in May 1997 joined other IAEA Board of Governors members in approving the Model Protocol for making IAEA Safeguards more effective and efficient, principally by improving IAEA's ability to detect clandestine nuclear materials and activities. By accepting and implementing the Protocol, the U.S. objective is to influence other countries to take the same steps.

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SECY-97-181, dated August 6, 1997, provided the Commission with information on: (1) commitments relating to the implementation, in the U.S., of new IAEA safeguards measures to detect clandestine nuclear activities; (2) the current plans for U.S. interagency coordinated activities to satisfy commitments; and (3) future Commission decisions that are likely to be needed concerning associated NRC responsibilities and staff effort.

Since publication of SECY-97-181, staff from the Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, participated in additional interagency meetings conducted by the Subcommittee on International Safeguards and Monitoring (SISM). During these sessions, SISM established the underlying basis for undertaking Additional Protocol articles and focused discussions on agency assignments of responsibilities for implementing article provisions. Agency assignments were based on the following: (1) safeguards measures that an agency is currently responsible for implementing; and (2) information management structure and/or framework, at an agency that could be readily used or modified to collect, document, report, and transmit the required safeguards data. An outline of NRC activities being carried out under the existing Safeguards Agreement (INFCIRC/288) and activities to be conducted under the Model Protocol Additional to the Agreement (INFCIRC/540) is provided in Attachment 3.

DISCUSSION:

The Protocol implementation measures tentatively assigned to NRC were evaluated for: (1) legislative; (2) regulatory; (3) information management; and (4) resource implications. A brief description of the NRC assigned responsibilities together with information on the associated impacts is provided in Attachment 4. A general summary of the impacts is as follows:

1. Legislative changes: Authorization is needed to obtain additional information and to provide for expanded access by IAEA inspectors to permit them to confirm the reported information and resolve questions. The Office of the General Counsel (OGC) has advised that NRC's current broad authorities may be sufficient authorization for NRC to implement the greater part of, if not all, assigned responsibilities. Legislation is being drafted, in a general but comprehensive manner, by OGC in coordination with the Arms Control and Disarmament Agency to clarify and provide for full-scope coverage of the implementation responsibilities.
2. Regulatory changes: Staff will need to revise the regulations contained within 10 CFR Part 75 ("Safeguards on Nuclear Material - Implementation of US/IAEA Agreement") and Part 110 ("Export and Import of Nuclear Equipment and Material"). Regulatory modifications will include extension of scope, adding definitions of new terms, and adding requirements to permit expanded IAEA access. A preliminary identification of the regulations needing modification, affected paragraphs within the regulations, and the nature of the proposed changes are also identified in Attachment 4. The streamlined rulemaking process could be applied to this effort if the changes to the regulations strictly follow the legislative and Protocol language.
3. Information management impacts: Although some information may be processed through the Nuclear Materials Management and Safeguards System, an additional database, with which NRC will interface, would have to be developed and funded by other agencies of the U.S. Government to support collection and reporting of the information under the Protocol. The development of this processing capability has not yet been addressed. Staff has suggested that this matter be addressed in the interagency plan of actions for implementation of the Protocol, including the provision of the needed resources to develop and operate the database.
4. Resource Requirements: The NRC will be required to conduct rulemaking activities; to process collected information and report it to the IAEA; to manage the information flow between the IAEA and those licensees required to report under the new Protocol; and to accompany IAEA inspectors

on their visits to licensed facilities, and facilitate any arrangements for "managed access." Although there remains a high level of uncertainty as to what specifically will be requested under the Protocol articles, the staff currently estimates that 2 additional full-time equivalents (FTEs) will be required during the first year, and 1 additional FTE each year thereafter (at an average cost of \$100,000 per FTE). Until negotiations are complete, the NRC will not know the exact number or location of the licensed facilities to which the IAEA will seek access, nor the extent to which NRC's data collection and reporting capabilities will need to be modified so that they are compatible with the new database. While these factors may affect the overall requirements for travel and information technology resources required to implement the Protocol, it is too early in the process to project estimated costs.

There are no resources in the NRC budget to implement the tasks described in this paper. These efforts will begin only after legislative action is completed and the necessary resources are provided to NRC. If appropriate funding is not provided through the Congressional budget process, any NRC decision to proceed with implementation of these additional responsibilities would be based on a request from the Executive Branch to the Commission, and direction from the Commission, to reprogram already limited resources to support this effort. Based on our existing and limited budgetary and FTE resources, we would not recommend support of the reprogramming option at this time.

RECOMMENDATION:

Staff proposes that the Commission accept the new IAEA safeguards responsibilities assigned to NRC as identified in Attachment 1. This acceptance would be on the condition that the Executive Branch: (1) makes arrangements for clarifying legislative authority; (2) provides to NRC needed additional resources, to include FTEs; and (3) develops and funds an interagency coordinated system for information processing and reporting. Unless the Commission directs otherwise, staff will accept the responsibilities through issuance of Attachment 2.

COORDINATION:

The Office of International Programs has reviewed this paper and agrees with the recommendation. The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and concurs in it. Additionally, the Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

L. Joseph Callan
Executive Director for Operations

- Attachments:
1. "Notice of IAEA Steering Committee Meeting November 5"
 2. "C. Stoiber, Director, Office of International Programs, letter to N. Wulf, Acting Chair, IAEA Steering Committee"
"NRC Activities under Safeguards Agreement and Additional Protocol to the Agreement"
 3. "Tentative Assignments to NRC and Associated Impacts"
 - 4.

ATTACHMENT 2

Norman A. Wulf, Acting Chair
IAEA Steering Committee
United States Arms Control and Disarmament Agency
Washington, DC 20451

Dear Mr. Wulf:

This letter is to inform you that the United States Nuclear Regulatory Commission accepts the implementation responsibilities for the Additional Protocol to INFCIRC/288 as stated in your memorandum dated September 25, 1997, on the condition that the Executive Branch provides for the following:

- clarifying legislative authority;
- resources, including full-time equivalent staff, to cover the additional NRC effort; and
- the funding, development, and operation of an interagency coordinated system for information processing and reporting.

If you have any questions or need additional information, please contact me at (301) 415-1780 or Mr. Theodore S. Sherr at (301) 415-7218.

Sincerely,
Carlton R. Stoiber, Director
Office of International Programs