

POLICY ISSUE

(Information)

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FOR: The Commissioners

FROM: Margaret M. Doane, Director /RA/
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SUBJECT: OPPORTUNITIES TO ACHIEVE GREATER AND MORE UNIFORM
ADOPTION OF THE PROVISIONS OF THE CODE OF CONDUCT BY
OTHER COUNTRIES (SRM-S06-0171)

PURPOSE:

The Office of International Programs is providing, for the Commission's information, a report on methods and opportunities to achieve greater and more uniform adoption of the provisions of the International Atomic Energy Agency's (IAEA) Code of Conduct for the Safety and Security of Radioactive Sources (Code) by other countries.

BACKGROUND:

This paper responds to the Commission's September 21, 2006, staff requirements memorandum (SRM-S06-0171) which directed the staff to "continue to keep the Commission informed of methods and opportunities to achieve greater and more uniform adoption of the provisions of the Code of Conduct by other countries." The staff has previously informed the Commission of our work to ensure harmonious adoption of the Code, including our bilateral arrangement to Canada, letters to our international trading partners, and multinational meetings on this issue. This paper provides the latest information the staff has on this subject.

From June 25 to June 29, 2007, the staff participated in the International Atomic Energy Agency's "Open-ended Meeting of Technical and Legal Experts for Sharing of Information as to States' Implementation of the Code of Conduct on the Safety and Security of Radioactive Sources and its supplementary Guidance on the Import and Export of Radioactive Sources." This meeting allowed a broad exchange of information on implementation of the Code and allowed countries to compare how their implementation practices differed from other countries' practices. This paper is mainly based on the information gained during this meeting.

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Using the IAEA meetings to encourage the uniform adoption of the Code is an effective and efficient means to accomplish this goal due to the large number of countries represented there. The meeting was attended by 122 experts from 70 Member States of the IAEA (Albania, Algeria, Argentina, Armenia, Australia, Azerbaijan, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, China, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Czech Republic, Dominican Republic, Ethiopia, Finland, France, Germany, Ghana, Hungary, India, Indonesia, Iraq, Ireland, Italy, Japan, Jordan, Kazakhstan, Republic of Korea, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Lithuania, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Myanmar, Nicaragua, Niger, Nigeria, Norway, Pakistan, Palau, Philippines, Romania, Russian Federation, Slovak Republic, South Africa, Spain, Sweden, Tajikistan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela and Vietnam) and 2 non-Member States of the IAEA (Cambodia and Burundi). The meeting was also attended by observers from the European Commission, the Organization for Security and Co-operation in Europe (OSCE) and the Food and Agriculture Organization (FAO).

DISCUSSION:

By having a discussion of implementation practices, the international community that exports and imports radioactive sources was able to learn the implementation practices of the other countries. Meetings like this will likely lead to more uniform adoption of the provisions of the Code since consensus opinions on the best implementation practices are developed once the country presentations have been completed. These meetings, which are tentatively scheduled to occur every three years, are an important vehicle for continuing to work toward a harmonized approach for implementing the Code and the related import and export guidance.

During the meeting, the NRC and Department of Energy representatives gave a presentation on the US experiences with implementing the Code. The US presentation was very well received by the country group based on the feedback received. At the conclusion of the NRC portion of the presentation, the bilateral arrangement between the NRC and the Canadian Nuclear Safety Commission (CNSC) for implementing the Code was discussed.

Some of the salient points on uniform Code adoption that were noted in the "Report of the Chairman" of the IAEA meeting are discussed in the following paragraphs.

A significant point was the suggestion that it would be useful to hold a separate international meeting to harmonize the implementation of the Code's guidance on the import and export of radioactive sources. Some participants suggested that it could be useful to share information on the reasons why import or exports were not authorized in particular cases, and the cases when they were authorized under "exceptional circumstances." Participants noted that there is currently no common approach by which an exporting State assures itself that the importing State is technically and structurally competent to receive Category 1 or 2 sources. This issue was raised by both Canada and the U.S. The proposed international meeting would be a more focused discussion that would likely be attended by most of the major exporting countries. Since the meeting's attendance would not be funded by the IAEA, the attendance would likely be limited to a much smaller audience (primarily the major exporters and importers). The meeting could be held sometime during the end of 2007 or first half of 2008. The NRC staff would plan on attending this meeting if it is held.

Based on the discussions during the meeting, the staff concluded that one way to encourage a

common implementation of the Code is through the IAEA's programs/missions for source security. Many of the meeting's participants welcomed the availability of assistance from the IAEA and other international and regional programs in developing a legislative and regulatory infrastructure. Such assistance has proven to be very valuable to many States. In particular, the IAEA's Radiation Safety and Security Infrastructure Appraisal (RaSSIA) missions and Model Projects had assisted States to improve their legislative and regulatory infrastructure. The IAEA noted that the next phase of these types of missions will include Code implementation issues.

During the meeting, there was some discussion of the differences between the Code of Conduct and the European Union (EU) legislation, such as the High Activity Sealed Source (HASS) Directive. Such legislation is binding on EU Member States, whereas the Code is not legally binding. At the same time, it was recognized that EU legislation (such as the HASS Directive) is not as detailed with respect to import/export outside the EU and security of radioactive sources as are the Code and the Guidance. It was noted that in order to fully implement the Code and Guidance, some EU Member States have already supplemented EU legislation with additional national legislation in the areas mentioned above.

Participants recognized the importance of establishing and maintaining a national register of Category 1 and 2 radioactive sources as recommended by the Code. Many States have established such a national register, but resource and other challenges have meant that some are only now starting to do so, and some have not yet started. Some participants noted that tracking systems formed an important component of their national registers. Participants noted new source tracking solutions which are taking advantage of modern computer technology (e.g. user accessible web-based systems, common systems with Customs, and GPS-tracking systems).

The meeting's discussion highlighted the importance of States' nominating and notifying to the IAEA national points of contact as a central part of those systems to facilitate the export and/or import of radioactive sources. Where such contact points have been nominated and actively responded to communications from exporting States, this has facilitated implementation of the Code. It was highlighted that there is no requirement for States to make a commitment to the Code and/or the Guidance prior to the nomination of a point of contact. It was recommended that nominations of national points of contact (preferably by position rather than name), their responsibilities if there is more than one within a State, and any changes to this information should therefore be notified promptly to the IAEA, so that it may continue to maintain an updated list of State points of contact.

As another approach to harmonize the implementation of the Code, participants noted that the practical implementation may be facilitated by widespread use of the notification and consent forms available to points of contact on the IAEA's secure web page. The NRC currently uses the IAEA's consent form and is considering the best way to implement the use of IAEA's notification form. However, the NRC has not received any negative feedback on the notification formats currently being used (the staff notes that the U.S. exporters, not the NRC, are required to notify the international points of contact of planned shipments).

To ensure a uniform implementation, a common understanding of the terms used in the Code must be developed. For instance, it was noted during the meeting that there was some uncertainty regarding the meaning of "consent" versus the meaning of "authorization" in relation to the export of Category 1 sources. Participants noted that these are two separate

requirements. Not only does the importing State need to consent to the import of the source, it also has to provide evidence that the intended recipient has the requisite authorization to hold the source. This clarification will help prevent problems the NRC faced during the early stages of our implementation of the Code.

Based on the significant progress made during the IAEA meeting and the recent experience working with our trading partners, the staff believes there will be continued movement toward uniform adoption of the Code. During the meeting, the peer reviews of the country presentations and written reports provided an effective method for reaching consensus on the best implementation strategies for the Code.

COMMITMENTS:

Based on the recent experience discussed above, the staff believes that the international community is making progress toward a more uniform implementation of the Code. The staff will continue to attend these international meetings and has offered to extend bilateral arrangements, similar to the one reached with the CNSC, to other countries. The staff will also continue to work with the Departments of State and Energy to encourage other countries to comply with the Code. The staff will continue to keep the Commission informed of significant issues affecting the international community's uniform adoption of the provisions of the Code.

COORDINATION:

The Office of the General Counsel reviewed this paper and has no legal objection.

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Office of International Programs