

POLICY ISSUE INFORMATION

July 12, 2000

SECY-00-0152

FOR: The Commissioners

FROM: Janice Dunn Lee, Director
Office of International Programs

SUBJECT: OIP-ADMINISTERED INTERNATIONAL ARRANGEMENTS AND
LETTERS OF AGREEMENT¹

PURPOSE:

To advise the Commission of the status of OIP-administered Arrangements and Letters of Agreement with other countries.

BACKGROUND:

Since May 1974, NRC (originally AEC-Regulation) has engaged in what has become a broad-scale program of developing and implementing nuclear safety information exchange and general cooperation Arrangements with our counterparts in other countries. Originally

CONTACTS: Donna Chaney, OIP, 415-2644
Dianne Johnson-Griggs, OIP, 415-2347

¹Although not the focus of this paper, it should be noted here that NRC's Office of Nuclear Regulatory Research administers an international research agreement program, to which OIP and OGC provide advice, on which they concur, and which OIP supports through the interagency review process. Many of these research agreements are now written as implementing agreements to the information exchange Arrangements, if the parties agree and if it will expedite the proposed cooperation. NRC's cooperative research program agreements currently number about 75. They usually call for contributions of funds or in-kind technical work and include provisions for the temporary assignment of personnel, the use of equipment and facilities in which research is being sponsored, and/or special services in exchange for input to the project direction and access to data as well as to the summary reports. The objectives of the cooperative research program are to share technical research information, to avoid duplication of effort, and to leverage limited resources by international participation in NRC's research programs as well as by NRC's participation in research programs conducted in other countries. Research agreements are typically negotiated and completed by mail, with the EDO signing for NRC as he was delegated authority to do in 1975.

designed to assure that the operational experience of countries with major commitments to LWR technology was available to the staff, the program was later expanded to include countries with small nuclear power programs, as well as some of those about to enter the nuclear field. The number of NRC technical information exchange Arrangements and Letters of Agreement considered to be in effect now stands at 35.

NRC's information exchange Arrangements serve as communications channels with foreign regulatory authorities, establishing the framework for NRC to gain access to non-U.S. safety information which can alert us to potential safety problems, help us identify possible accident precursors, and provide accident and incident analyses, including lessons learned, which could be directly applicable to the safety of U.S. nuclear power plants and other facilities. They also serve as vehicles for the health and safety assistance NRC supplies to less-developed countries in their attempts to prevent accidents and to develop and improve their regulatory capabilities and their nuclear safety infrastructure. Thus, the Arrangements facilitate NRC's strategic goal to support U.S. interests in the safe and secure use of nuclear materials and in nuclear nonproliferation both at home and abroad.

DISCUSSION:

Five to eight of NRC's information exchange Arrangements typically come up for renewal each year. Most of these renewals are fairly routine. For 2000, scheduled renewals include Germany, the Republic of Korea, and Spain. In addition, renewals of the Arrangements with the Czech and Slovak Republics and Lithuania, which expired in 1999, are expected to be completed this year, as well as a new Arrangement (approved by the Commission last year) with Romania. Plans are for the Chairman to sign these on the margins of the IAEA General Conference in Vienna this September.

The renewal of the Arrangement with Sweden, which technically expired in December 1999, remains under negotiation. The Swedish Nuclear Power Inspectorate (SKI) has proposed an abbreviated text that eliminates several provisions necessary to NRC. The staff is drafting a revised proposal which will attempt to accommodate the SKI's desire for a shortened text, but which reinstates those elements needed to meet NRC's requirements.

Attachment 1 is a list of OIP-administered Arrangements, alphabetized by country, which indicates, among other things, the partner organizations, the dates the Arrangements were first signed and last renewed, and the date of the next scheduled renewal. This list will be updated and provided to the Commission semi-annually.

For those interested in additional information about the Arrangement program, Attachment 2 is a detailed discussion of the renewal (and initial) Arrangement process and Attachment 3 is a list of definitions pertaining to the process.

COORDINATION:

The EDO, NMSS, RES, and NRR concur in this paper. OGC has no legal objection. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections.

/RA/

Janice Dunn Lee, Director
Office of International Programs

Attachments: (3)

1. List of OIP-Administered Arrangements
2. Paper: The Renewal (and Initial) Arrangement Process
3. Definitions Pertaining to the Arrangement Process

DISTRIBUTION:

ADAMS (IP-1A-4)

OIP r/f

DChaney, OIP

DGriggs, OIP

BDoroshuk, OIP

MPeterson, OIP

RHauber, OIP

ASzukiewicz, RES

DHassell, OGC

OGC

EDO

CFO

NRR

NMSS

NRR

NMSS

DOCUMENT NAME: G:\ARRANGEM\SECYPAP.REV2.wpd

See previous concurrence sheet for OIP, RES, OGC, and CFO & NRR 06/ /00 06/ /00

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	OIP/A	OIP	OIP/A	OIP/B	OIP/DD
NAME	DChaney:avl	DJohnson-Griggs	EDoroshuk	MPeterson	RHauber
DATE	06/05/00	06/06/00	06/05/00	06/06/00	06/07/00

To receive a copy of this document, indicate in the box: "C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICE	OIP/D	RES	OGC	EDO	CFO
NAME	JDunnLee	ASzukiewicz	DHassell		
DATE	07/ /00	06/08/00	06/07/00	07/ /00	06/13/00 w/c

OIP Administered Arrangements

Country	Type	Organization	Bi - or Tri lateral	Date Orig. Signed	Last Signature Date	Renewal Due Date	Term	Status
Argentina	Tech. Info Exchg. & Coop.	NRC-CNEA	Bilateral	11/30/1990	09/14/1996	09/14/2001	5 Years	
Armenia	Tech. Info Exchg. & Coop.	NRC-ANRA	Bilateral	09/30/1997	09/30/1997	09/30/2002	5 Years	
Belgium	Tech. Info Exchg. & Coop.	NRC-Belgian Govt	Bilateral	06/06/1978	05/02/1988	05/02/1993	5 Years	Deferred at GOB request until new regulatory body is Set up
Brazil	Tech. Info Exchg. & Coop.	NRC-CNEN	Bilateral	05/20/1976	09/30/1999	09/30/2004	5 Years	
Canada	Tech. Info Exchg. & Coop.	NRC-AECB	Bilateral	06/21/1989	08/15/1996	08/15/2001	5 Years	MOU
China	Tech. Info Exchg. & Coop.	NRC-NNSA	Bilateral	10/17/1981	09/24/1998	09/24/2003	5 Years	Protocol
Czech Republic	Tech. Info Exchg. & Coop.	NRC-SUJB	Bilateral	11/10/1994	11/10/1994	11/10/1999	5 Years	Draft text proposed
Egypt	Tech. Info Exchg. & Coop.	NRC-ENEA	Bilateral	06/08/1981	06/08/1981	06/08/1991	10 Years	Deferred until ENEA requests reinstatement
Finland	Tech. Info Exchg. & Coop.	NRC-STUK	Bilateral	09/26/1980	04/09/1996	04/09/2001	5 Years	
France	Tech. Info Exchg. & Coop.	NRC-MIAT	Bilateral	06/28/1974	09/04/1990	09/04/1995	5 Years	Held up by intellectual property rights
Germany	Tech. Info Exchg. & Coop.	NRC-BMU	Bilateral	10/01/1975	10/19/1995	10/19/2000	5 Years	Renewal under discussion
Greece	Tech. Info Exchg. & Coop.	NRC-GAEC	Bilateral	10/18/1978	09/22/1998	09/22/2003	5 Years	
Hungary	Tech. Info Exchg. & Coop.	NRC-HNAEC	Bilateral	09/24/1990	09/16/1996	09/16/2001		
Indonesia	Tech. Info Exchg. & Coop.	NRC-BAPETEN	Bilateral	10/28/1992	09/23/1998	09/23/2003		
Israel	Tech. Info Exchg. & Coop.	NRC-IAEC	Bilateral	05/19/1978	09/23/1998	09/23/2003		
Italy	Tech. Info Exchg. & Coop.	NRC-ANPA	Bilateral	05/29/1975	09/28/1999	09/28/2004		
Japan	Tech. Info Exchg. & Coop.	STA & NRC-MITI/ANRE	Trilateral	05/30/1974	10/23/1997	10/23/2002		
Kazakhstan	Tech. Info Exchg. & Coop.	NRC-KAEA	Bilateral	02/14/1994	02/14/1999	12/14/2004	5 Years	

Country	Type	Organization	Bi - or Tri lateral	Date Orig. Signed	Last Signature Date	Renewal Due Date	Term	Status
Korea	Tech. Info Exchg. & Coop.	NRC-MOST	Bilateral	03/18/1976	06/05/1995	06/05/2000	5 Years	Draft text proposed
Lithuania	Tech. Info Exchg. & Coop.	NRC-VATESI	Bilateral	04/29/1994	04/29/1994	04/29/1999	5 Years	Draft text proposed
Mexico	Tech. Info Exchg. & Coop.	NRC-CNSNS	Bilateral	04/08/1981	03/15/1997	03/15/2002	5 Years	
Netherlands	Tech. Info Exchg. & Coop.	NRC-NMSAE	Bilateral	10/03/1977	10/02/1997	10/02/2002	5 Years	
Peru	Tech. Info Exchg. & Coop.	NRC-IPEN	Bilateral	07/03/1990	07/03/1990		Open	Limited cooperation letter
Philippines	Tech. Info Exchg. & Coop.	NRC-PAEC	Bilateral	04/28/1980	07/02/1993		Open	Limited cooperation letter
Russia	Tech. Info Exchg. & Coop.	NRC-RUSS FED	Bilateral	04/26/1988	09/16/1996	09/16/2001	5 Years	
Slovak Republic	Tech. Info Exchg. & Coop.	NRC-UJDSR	Bilateral	04/14/1989	11/10/1994	11/10/1999	5 Years	Draft text proposed
Slovenia	Tech. Info Exchg. & Coop.	NRC-SNSA	Bilateral	09/19/1985	04/29/1999	04/29/2004	5 Years	
South Africa	Tech. Info Exchg. & Coop.	NRC-DME	Bilateral	02/17/1999	02/17/1999	02/17/2004	5 Years	Limited MOC
South Africa	Tech. Info Exchg. & Coop.	NRC-CNS	Bilateral	09/27/1994	03/30/2000	03/30/2005	5 Years	Full provisions
Spain	Tech. Info Exchg. & Coop.	NRC-CSN	Bilateral	10/29/1974	05/11/1995	05/11/2000	5 Years	Draft text proposed
Sweden	Tech. Info Exchg. & Coop.	NRC-SKI	Bilateral	12/06/1974	12/12/1994	12/12/1999	5 Years	Simplified SKI-proposed text under review; needs substantial revision
Switzerland	Tech. Info Exchg. & Coop.	NRC-FOE	Bilateral	12/09/1974	09/30/1997	09/30/2002	5 Years	
Ukraine	Tech. Info Exchg. & Coop.	US-UKRA FED	Bilateral	04/26/1988	07/22/1998	10/25/2003	5 Years	
United Kingdom	Tech. Info Exchg. & Coop.	NRC-H&SE	Bilateral	03/13/1975	09/18/1996	09/18/2001	5 Years	
Taiwan	Tech. Info Exchg. & Coop.	AIT-TECRO	Bilateral	03/20/78	10/19/99	10/19/04	5 Years	

THE RENEWAL (AND INITIAL) ARRANGEMENT PROCESS

Initial Steps to Agreed Text

The OIP staff drafts and secures OGC and RES concurrence on a renewal proposal which incorporates all of the provisions added/modified by NRC or the Executive Branch since the last signature. Typically, this draft is then forwarded by either the staff or the OIP Director simultaneously to the partner country for review and comment and to the Executive Branch for clearance. Most of the time, only minor changes are requested or required by either, so little negotiation is necessary to reach an agreed signature text.

Signings

The staff then determines whether the partner country is planning to visit NRC in the foreseeable future. If so, the staff normally works with the partner country to set up a signing ceremony with the Chairman as head of the agency and as Chief Administrative Officer as one item of business to be accomplished during the visit. If not, and there is no planned travel to the country by the Chairman, the OIP staff normally works with the partner country and with our IAEA resident representative to arrange for the Chairman to meet with the partner and to sign the renewal Arrangement on the margins of the IAEA General Conference in Vienna, usually scheduled each year at the end of September.

Commission Notification

The staff must, before signature of any international Arrangement (or renewal thereof), advise the Commission of the approaching Arrangement and call to its attention any significant deviation(s) from the norm. The staff relies on an information item in the Commission's Weekly Items of Interest to carry out this requirement, since directed to do so by the EDO's office in the late 1980's. (This was an EDO response to the Reduction-in-Paperwork Act. OIP had previously forwarded a paper to the Commission, with the Arrangement to be concluded attached, before each Arrangement signing.)

In those cases where a new Arrangement is under discussion or a partner or particular provisions of an Arrangement may be considered unusual or controversial, the OIP staff prepares and forwards a paper to the Commission, pointing out policy considerations or special circumstances and recommending a course of action.

The OIP staff also alerts the Commission when significant problems are encountered, such as when the Arrangement program drew to a six-month halt in late 1990 - early 1991 when the Executive Branch began requiring the use of "new" and tighter intellectual property rights (IPR) language in all U.S. agency international science and technology agreements. The staff, after two rounds of consultations with the U.S. Trade Representative, Commerce, the Office of Science and Technology Policy, and State, convinced the Executive Branch that NRC's IPR coverage was adequate to its needs and was allowed to continue with an only-slightly-revised version of one of the texts already in use. Most of NRC's partners were able to accept this slight revision as soon as it was proposed. However, several partners such as Japan,

Germany, the United Kingdom, and Canada did not complete renewals for 2-5 years, until country-specific IPR provisions (which NRC then incorporated into the Arrangements with them) were worked out government-to-government. France remains an “outlier” to this day, unwilling to accept the need for any IPR provisions in the agency-to-agency Arrangement although specific U.S.-French IPR provisions have been developed. (Because it is such an important “partner,” the staff has continued to exchange information and to cooperate closely with France, although a formal Arrangement has not been in effect since 1995.)

Coordination with the Executive and Legislative Branches

All international arrangements must be cleared with the Executive Branch before signature. OIP, working through the Office of Nuclear Energy Affairs of the Bureau of Nonproliferation, Department of State, secures required U.S. interagency approvals for all NRC international agreements before their signature (through the Circular 175A authorization process). OIP also works with the DOS Division of Language Services to verify for textual authenticity any version of the Arrangement to be signed in the language of the partner country. Finally, to comply with the Case-Zablocki Act, OIP must notify the Congress, through the Treaty Affairs Office at the Department of State, of all NRC international Arrangements within 60 days of their entry-into-force. (NRC has 20 days to complete its part of this process.)

Duration

The Commission reaffirmed in 1980 that NRC’s international Arrangements should all be written for periods not to exceed five years, but could be extended for additional five-year periods by mutual written consent. The Commission decided that this duration permitted timely review of all terms and, where necessary, revision to reflect significant changes in U.S. and agency policy.

Resource Commitment

It should be noted that, although they are intentionally written broadly enough to cover any nuclear safety cooperation that the partners might agree to undertake, the information exchange Arrangements typically **commit** NRC only to the exchange of documents and information, including early advice of important events which are of immediate interest. All other cooperative activities mentioned (such as confirmatory safety research, training and assignments, and additional safety advice) are to be considered on a case-by-case basis, are to be the subject of a separate agreement, or are offered with the caveat that they “may” be provided and always within the limits of available resources.

DEFINITIONS PERTAINING TO THE ARRANGEMENT PROCESS

The Department of State (DOS) proffers a long and complex definition of an “international agreement other than a treaty” (which enters into force only after Senate advice and consent). In the part that pertains most closely for purposes of NRC, an “**international agreement or Arrangement**” is a binding undertaking between two or more governments or agencies of those governments covering the areas of information exchange, general cooperation, and/or research collaboration, which meets the following additional criteria:

1. It must be governed by international law and not by the domestic laws of any of the parties.
2. It must be signed by parties which have the authority to bind their governments or governmental agencies in international agreements.
3. It must be a primary or umbrella agreement - not an “implementing Agreement” which was clearly anticipated in a prior, more broadly-based agreement.

Although it would appear that many of NRC’s Arrangements and Letters of Agreement do not meet all of the above-mentioned criteria, DOS has reserved for itself the right to make such determinations. All proposed NRC Arrangements and Letters of Agreement which are clearly not implementing agreements are therefore submitted to the DOS for review. DOS has historically treated most of NRC’s Arrangements and Letters of Agreement as “international agreements” which, as such, become subject to the Circular 175A authorization process.

A “**Letter of Agreement**” is a less comprehensive (mini) information exchange Arrangement. It was developed by the staff primarily to accommodate countries considering the feasibility of or moving toward a nuclear power program which approached NRC about establishing a continuing relationship. The agreed exchange is limited to the materials safety and radiation protection areas, although documents in the reactor safety area may be provided upon specific request.

“**Circular 175A**” is the codification of DOS requirements and general guidelines on the negotiation, signature, publication, and registration of U.S. treaties and other international agreements.

The “**Circular 175A authorization process**” is the required procedure under which all proposed international arrangements and agreements must be submitted to DOS for coordination of U.S. interagency and in-house review and comment *before* the DOS issues a letter authorizing the agency to negotiate and/or proceed to signature with an agreement. The full process involves over 25 agencies and desks within DOS. (Except where circumstances obviously indicate otherwise, the DOS has traditionally allowed NRC to wait until negotiations are essentially complete and a text has been agreed to by the parties, since most of NRC’s Arrangements and partners are non-controversial.) All identified questions and issues must be resolved before this letter is forwarded to the requesting agency and any substantive changes made subsequently must be cleared beforehand with DOS.