



Department of Defense INSTRUCTION

NUMBER 2060.03
November 13, 2008

USD(AT&L)

SUBJECT: Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America

References: See Enclosure 1

1. PURPOSE. Under the authority of DoD Directive 5134.01 (Reference (a)), this Instruction:

a. Implements policy established in DoD Directive 2060.1 (Reference (b)) for DoD planning and application of the National Security Exclusion (NSE) under agreements between the United States and the International Atomic Energy Agency (IAEA) for implementation of IAEA safeguards (References (c) and (d)).

b. Establishes DoD requirements and procedures, in accordance with U.S. policy and law in References (e) through (j), for applying the NSE and for using managed access at or near locations, sites, and facilities as well as associated information and activities with direct national security significance to the Department of Defense.

2. APPLICABILITY. This Instruction applies to:

a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (herein referred to collectively as the "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

b. The NSE provisions of References (c) and (d). The obligations of the Protocol Additional to the Agreement Between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States (AP) in Reference (d) shall be applied in conjunction with the original obligations of Reference (c). The combined regime shall be herein referred to as "Integrated Safeguards."

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy according to Reference (b) that:

a. All DoD activities related to Integrated Safeguards shall fully comply with References (c) and (d), in accordance with U.S. policies and law established by References (e) through (j).

b. The Department of Defense shall not declare or make eligible any current or former locations, sites, or facilities, or associated information or activities, of direct national security significance for the purpose of IAEA access under the provisions of References (c) or (d) in accordance with References (i) through (ac).

c. The NSE shall be applied to exclude IAEA access under Integrated Safeguards to all current or former DoD-owned or -leased locations, sites, and facilities (or associated information or activities) of direct national security significance, including but not limited to: operations and training; intelligence; materiel production, maintenance, and supply; research, development, testing, and evaluation; and infrastructure and personnel.

d. The NSE shall be applied to exclude any other facility under Reference (c), as well as any location, site, or facility, or associated information or activities, of direct national security significance under Reference (d), from AP Declaration requirements and from IAEA access where its proximity to or association with a DoD location, site, or facility could result in IAEA access. The NSE does not apply to U.S. Government (USG) assets outside of the United States. Any exclusion of USG assets outside of the United States should be addressed with the host country through the applicable host country agreements.

e. The use of managed access (consistent with References (d), (g), and (h)) shall always be required by the Department of Defense during any IAEA complementary access visit or inspection to ensure that the IAEA has no access to DoD locations, sites, or facilities, or associated information or activities, of direct national security significance. Where or when the Department of Defense finds that these managed access provisions will not prevent IAEA access as required, the Department of Defense shall apply the NSE.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. INFORMATION REQUIREMENTS

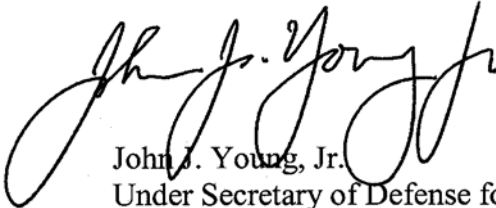
a. The USG will use the Additional Protocol Reporting System (APRS), a Web-based, unclassified database system developed and operated by the Department of Commerce, to

manage the collection, storage, processing, and reporting of all declarations and related information. Applying the NSE requires timely access to information from the U.S. Lead Agencies, the APRS, and the DoD Components. Capabilities and procedures are also required for monitoring and reviewing data reported by the other Government agencies, public and private institutions, commercial businesses, and the IAEA itself continuously. The general procedures for reviewing proposed declarations outlined herein will be supplemented by specific guidance based on the actual operating procedures required for the APRS or any successor system that the USG may use for AP reporting.

b. The DoD Nuclear Treaty Manager and the DoD Components shall require continuous access to updated information on U.S. facilities eligible for IAEA safeguards as well as AP Declarations to support required security vulnerability assessments, the timely application of the NSE, and to develop and maintain requirements and procedures for managed access at or near Defense equities. In addition, information on certain national security-related facilities and activities may be required to support decisions on applying the NSE to exclude DoD locations, sites, or facilities from AP Declarations or limit IAEA inspectors' access to them during a complementary access visit or inspection. Rapid access to information on IAEA inspectors, IAEA inspection schedules, and the equipment that may be used during complementary access will be necessary to support DoD decision making.

8. RELEASABILITY. UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

9. EFFECTIVE DATE. This Instruction is effective immediately.



John J. Young, Jr.
Under Secretary of Defense for
Acquisition, Technology and Logistics

Enclosures

1. References
 2. Responsibilities
 3. Procedures
 4. U.S.-IAEA AP Reporting Requirements
- Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))," December 9, 2005
- (b) DoD Directive 2060.1, "Implementation of, and Compliance with, Arms Control Agreements," January 9, 2001
- (c) Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States, entered into force December 9, 1980¹
- (d) Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, signed June 12, 1998¹
- (e) Principles for the Application of the U.S. National Security Exclusion to the U.S. Additional Protocol, February 24, 1998¹
- (f) National Security Presidential Directive on the Implementation of the U.S.-IAEA Additional Protocol (U), NSPD-57 of February 4, 2008¹
- (g) Subsidiary Arrangement to the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, July 12, 1998¹
- (h) Senate Resolution of Ratification, Treaty Document 107-7 [Page: S3511], "Protocol to the Agreement of the International Atomic Energy Agency Regarding Safeguards in the United States, with 2 Conditions and 8 Understandings," March 31, 2004¹
- (i) Public Law 109-401, "United States Additional Protocol Implementation Act," December 18, 2006¹
- (j) Executive Order 13458, "Implementation of the Protocol Additional to the Agreement Between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States of America," February 4, 2008
- (k) DoD Directive 5205.07, "Special Access Program (SAP) Policy," January 5, 2006
- (l) DoD Instruction O-5205.11, "Management, Administration, and Oversight of DoD Special Access Programs (SAPs)," July 1, 1997
- (m) "DoD Overprint to NISPOM Supplement," April 1, 2004¹
- (n) DoD Directive 5205.10, "Department of Defense Treaty Inspection Readiness Program (DTIRP)," December 5, 2000
- (o) DoD Directive 5230.09, "Clearance of DoD Information for Public Release," August 22, 2008
- (p) DoD Instruction 5230.29, "Security and Policy Review of DoD Information for Public Release," August 6, 1999
- (q) DoD Directive 5205.02, "DoD Operations Security (OPSEC) Program," March 6, 2006
- (r) DoD Instruction 5200.08, "Security of DoD Installations and Resources," December 10, 2005
- (s) DoD 5200.1-R, "Information Security Program," January 14, 1997

¹ Available from the Office of the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, Treaties and Threat Reduction Office.

- (t) DoD S-5210.41-M, "Nuclear Weapon Security Manual (U)," November 2004
- (u) DoD Instruction O-5210.63, "DoD Procedures for Security of Nuclear Reactors and Special Nuclear Materials (SNM)," November 21, 2006
- (v) DoD Instruction 5210.65, "Minimum Security Standards for Safeguarding Chemical Agents," March 12, 2007
- (w) DoD Directive 5210.83, "Department of Defense Unclassified Controlled Nuclear Information (DoD UCNI)," November 15, 1991
- (x) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign Governments and International Organizations," June 16, 1992
- (y) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987
- (z) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984
- (aa) DoD Directive 5220.22, "National Industrial Security Program," September 24, 2004
- (ab) DoD 5220.22-M "National Industrial Security Program Operating Manual (NISPOM)," February 28, 2006
- (ac) DoD Instruction 5200.39, "Critical Program Information (CPI) Protection Within the Department of Defense," July 16, 2008

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS (USD(AT&L)). The USD(AT&L) shall:

- a. Designate the Nuclear Treaty Manager to facilitate DoD Component reviews of U.S. facilities eligible for IAEA safeguards under Reference (c) or declarable activities under Reference (d). The Nuclear Treaty Manager shall review the recommendation to apply the NSE through the procedures under this Instruction.
- b. Chair and convene a DoD Compliance Review Group (CRG) as needed to address and resolve compliance issues in a timely manner.
- c. Certify through the appropriate chains of command that the DoD Component reviews of eligible facilities and declarable activities are complete and the NSE is applied as required.
- d. Designate the DoD Host Team member(s) for inspections under Integrated Safeguards.
- e. Ensure that the above responsibilities are carried out in accordance with References (k), (l), and (m) for Special Access Programs.
- f. Designate the Nuclear Treaty Manager, or a designated representative, to serve as the single DoD point of contact for the APRS authorized to electronically communicate and verify DoD NSE requirements or its approval of proposed AP Declarations. This representative shall also manage a secure but unclassified link to the APRS.

2. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)). The USD(P) shall:

- a. Provide advice and assistance for application of the NSE and address related compliance matters in consultation with the CRG, as appropriate.
- b. Represent the Secretary of Defense on matters related to the Department of Defense's application of the NSE involving the National Security Council (NSC), the Department of State, and other Federal departments and agencies with responsibility for national security policy in accordance with Reference (b).

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

- a. Ensure DoD Component compliance with the policy and procedures established herein.

b. Designate an implementation and compliance review manager (Reference (b)) to report to the Nuclear Treaty Manager and to initiate recommendation(s) for application and/or removal of the NSE, provide justification for use of the NSE as required, and to address associated managed access or compliance matters.

c. Develop requirements and procedures for managed access, Military Department equity database management as applicable, and security and counterintelligence training necessary to protect DoD equities.

d. As necessary, request assistance from the Defense Treaty Inspection Readiness Program for security vulnerability assessments or other matters through the Defense Threat Reduction Agency in accordance with Reference (n).

4. CHAIRMAN OF THE JOINT CHIEFS OF STAFF. The Chairman of the Joint Chiefs of Staff shall:

a. Provide advice and assistance for application of the NSE and address related compliance matters in consultation with the CRGs, as appropriate.

b. Coordinate reviews of eligible facilities and declarable activities by the Military Departments and Combatant Commands for the application of the NSE and managed access.

c. Coordinate time-sensitive applications of the NSE by the Military Departments or Combatant Commands and address associated managed access or compliance matters.

d. Provide military advice on matters related to the DoD application of the NSE involving the NSC, the Department of State, and other Federal departments and agencies with responsibility for national security policy.

e. Manage and provide secure communications to OSD regarding all the Military Departments and Combatant Command equities.

ENCLOSURE 3

PROCEDURES

The Department of Defense shall apply the NSE provisions of Integrated Safeguards through the following implementation and compliance procedures. Each DoD Component shall make this determination in accordance with its specific security requirements, applicable DoD acquisition regulations, security and countermeasures policies, coordinated military guidance, relevant defense threat assessments and counterintelligence, and the results of any necessary security vulnerability assessments. If essential information required to make this determination for any facility is not available during this review, the NSE shall be applied to that facility until such time that the required information is available and a determination can be made.

1. APPLYING THE NSE UNDER THE U.S.-IAEA SAFEGUARDS AGREEMENT. The Department of Defense shall apply the NSE provision of Reference (c) during periodic reviews of proposed U.S nuclear facilities potentially eligible for IAEA safeguards or whenever a change in circumstances requires prompt action to prevent IAEA access to current or former DoD locations, sites, or facilities, as well as associated information or activities of direct national security significance.

a. Applying the NSE During Periodic Reviews of Proposed Eligible Facilities Lists (EFLs). The Department of Defense shall periodically review proposed EFLs to identify facilities in proximity to DoD equities and apply the NSE provision of Reference (c), as described in this Instruction. These reviews shall be completed and the NSE applied, as necessary, before any proposed EFL or update is submitted to Congress for approval and subsequent transmittal to the IAEA.

(1) The Nuclear Treaty Manager shall receive proposed updates to the EFL, verify essential information with the U.S. Lead Agencies responsible for those facilities, and promptly disseminate this information to the DoD Components for action.

(2) The DoD Components shall review the proposed EFL, or EFL updates, and identify those facilities that must be eliminated from the list to prevent IAEA access (under Reference (c)) to any activity or associated facility of direct national security significance. Each DoD Component shall make this determination according to its specific security requirements as described in the introductory paragraph to this enclosure.

(3) The DoD Components shall complete their reviews of the proposed EFL, or EFL updates, within 60 calendar days of receipt from the Nuclear Treaty Manager. The designated implementation and compliance review managers shall notify the Nuclear Treaty Manager through the appropriate chains of command of any facilities that require removal from the EFL.

(4) The Nuclear Treaty Manager shall consolidate the DoD Components' notifications into a summary report of DoD applications of the NSE to the proposed EFL. DoD Components

shall verify this report as the official DoD requirement for NSE under Reference (c), and the Nuclear Treaty Manager shall provide it to the USD(AT&L) for endorsement and forwarding to the USD(P) for action with a copy provided to the Chairman of the Joint Chiefs of Staff.

(5) Before the proposed EFL is transmitted to Congress for its approval and subsequent transmittal to the IAEA, the USD(P) shall notify the Department of State and the responsible agencies of the facilities that the Department of Defense requires to be excluded under the NSE.

(6) Interagency issues related to application of the NSE to a proposed eligible facility by the Department of Defense shall be addressed in accordance with References (b) and (f).

b. Applying the NSE Under IAEA Safeguards due to a Change in Circumstances. At any time, a DoD Component may determine that a change in operations, acquisitions, threats, vulnerabilities, security requirements, or other circumstances requires the NSE promptly be applied to a facility on the EFL to prevent IAEA access to any activity or associated facility of direct national security significance. This change in circumstances may require the facility, including those already under IAEA safeguards, to be removed from the EFL for a defined time period or indefinitely.

(1) The DoD Component implementation and compliance review manager, or designated representative, shall notify the Nuclear Treaty Manager through the appropriate chains of command of the requirement to apply the NSE due to a change in circumstances, specifying the facility or facilities to be removed and the date(s) required for removal.

(2) The Nuclear Treaty Manager shall promptly review this requirement and submit it to the USD(AT&L) with copies to the USD(P) and the Chairman of the Joint Chiefs of Staff.

(3) The USD(P) shall promptly notify the Department of State and the U.S. Lead Agency responsible for the eligible facility subject to the DoD application of the NSE based on a change in circumstances to prevent IAEA access under the provisions of Reference (c).

(4) The Department of Defense shall address interagency issues related to a change in circumstances and the application of the NSE to facilities on the EFL in accordance with Reference (f).

2. APPLYING THE NSE UNDER THE AP. The Department of Defense shall apply the NSE to exclude IAEA access under Reference (d) to all current and former DoD locations, sites, and facilities as well as associated information and activities of direct national security significance. This includes DoD-owned or -leased spaces, structures, facilities, installations, or land, as well as all DoD-funded programs, activities, or information associated with military, national security, or homeland defense, including but not limited to: operations and training; intelligence; materiel production, maintenance, and supply; research, development, test and evaluation; and infrastructure and personnel.

a. Timely DoD Assessments and Application of the NSE. The following situations require timely DoD assessments and application of the NSE:

(1) Prior to entry into force of the AP and during the initial data call by U.S. Lead Agencies to identify potentially declarable activities, but before information on those activities is entered into the unclassified APRS, described in section 7 of the front matter of this Instruction.

(2) Prior to entry into force of the AP and during review and verification of the initial declarable activities list compiled in the APRS, but before submission to Congress for approval as the AP Declaration.

(3) During subsequent reviews after the AP enters into force of periodic data calls and proposed updates to the AP Declaration, but before such updates are submitted for Congressional approval. (See Enclosure 4 for periodic reporting requirements.)

(4) Whenever a change in circumstances requires prompt action by the Department of Defense to exclude a proposed declaration from the AP Declaration to avoid compromising the security of a defense equity.

(5) Whenever IAEA complementary access, even with managed access by a U.S. host team, would result in IAEA access to a current or former DoD location, site, or facility or associated information or activities of direct national security significance. In accordance with References (f) and (h), the Department of Defense must also define the necessary requirements and develop procedures for managing access at or near locations of the DoD equities excluded under the NSE.

b. Applying the NSE Under the AP During the Initial Data Call for Potential AP Declarations. The Department of Defense shall not declare any activity under Reference (d), explicitly applying the NSE as needed. In addition, Reference (f) designates the Department of Defense as one of the U.S. Lead Agencies responsible for ensuring that no classified information is provided to the IAEA, and that proliferation-sensitive and commercially sensitive and proprietary information is protected to the fullest extent permitted by law. To mitigate potential compromise of classified or sensitive defense equities by the other agencies, the Department of Defense is required to review all potential AP Declarations before they are entered into the unclassified Web-based APRS and to apply the NSE as instructed here. Reviews will be conducted in accordance with References (o) through (q).

(1) The Nuclear Treaty Manager shall coordinate and facilitate DoD review of the initial data collected by the Department of Energy, the Nuclear Regulatory Commission, the Department of Commerce, or other organizations responsible for collecting, preparing, or reporting such declarations. The Nuclear Treaty Manager shall monitor these declaration processes; request, receive, and verify necessary information from these agencies; and disseminate that information to the DoD Components in a timely, secure manner for action.

(2) The DoD Components shall promptly review and assess the information collected from Government agencies, public or private institutions, or commercial businesses and identify

those potential declarations that could include classified or other sensitive information related to their equities. The DoD Components shall make this initial assessment based on their specific operations and acquisition security requirements and coordinated military guidance, as well as those DoD security and countermeasures policies implemented in accordance with Reference (b). The DoD Components may request additional information from the Nuclear Treaty Manager, the responsible U.S. Lead Agency, or the declaring entity to support their assessments.

(3) The DoD Components shall approve potential declarations not associated with a location, site, or facility, or related information or activity, of direct security significance to the DoD Component for electronic reporting and inclusion in the APRS for reporting.

(4) The DoD Components shall identify potential declarations determined to involve a location, site, or facility or related information or activity of direct national security significance and report those potential declarations to the Nuclear Treaty Manager for exclusion from reporting to the APRS in any form under the NSE.

(5) If essential information required to make this determination for any facility is not available during this review, the potential declaration shall be excluded from electronic reporting into the APRS until such time that the required information is available and a determination can be made. In accordance with Reference (f), the U.S. Lead Agency for that potential declaration shall be notified by the Nuclear Treaty Manager that only a hard copy form of that declaration is permitted, pending subsequent security review.

(6) The DoD Components' designated implementation and compliance review managers shall notify the Nuclear Treaty Manager of the potential declarations to be excluded from electronic reporting to the APRS within 60 calendar days of receiving the initial information from the Nuclear Treaty Manager. This notification shall include the cause for each exclusion, specifying that the NSE is needed either to mitigate IAEA access to a DoD equity or because the information provided is inadequate to determine if the potential declaration may compromise a classified or sensitive defense equity, or both. Those potential declarations not identified for exclusion shall be approved by the DoD Component through the Nuclear Treaty Manager for reporting and inclusion in the APRS only as a potential declaration, subject to further review.

(7) The Nuclear Treaty Manager shall verify the required exclusions with the DoD Components and coordinate requests for additional information to resolve uncertainties, if required. The Nuclear Treaty Manager shall consolidate the DoD Components' exclusion requirements after receiving written notifications from all DoD Components that their necessary reviews are complete. The Nuclear Treaty Manager shall ensure that the DoD review of the initial data call is complete and submit the list of all required exclusions to the APRS to the USD(AT&L) for endorsement with copies to the USD(P) and the Chairman of the Joint Chiefs of Staff. In consultation with the Nuclear Treaty Manager and the Chairman of the Joint Chiefs of Staff, the USD(P) shall promptly notify the U.S. Lead Agency of any potential declaration(s) to be excluded by the Department of Defense under the NSE or from electronic reporting to the APRS pending further review.

(8) Issues related to these exclusions by the Department of Defense shall be addressed in accordance with References (b) and (f).

c. Applying the NSE Under the AP During the Review of the Initial AP Declaration. The Department of Defense and other U.S. Lead Agencies are required to review each declarable activity in the APRS and approve its aggregation into the initial AP Declaration. In accordance with Reference (h), this review must be completed before entry into force of the AP, and before this initial AP Declaration is submitted to Congress for approval and subsequent transmittal to the IAEA.

(1) The Nuclear Treaty Manager shall use secure but unclassified electronic communications between the Department of Defense, the APRS, and other U.S. Lead Agencies, as well as the necessary procedures, information management tools, and operational capabilities needed to routinely monitor, receive, review, copy, and disseminate proposed declarations, or updates, to the DoD Components.

(2) The DoD Components shall use secure communications with the Nuclear Treaty Manager necessary to receive information from the APRS, as well as the capabilities and procedures needed to enable their timely review, assessment, and notification of their NSE requirements to the Nuclear Treaty Manager.

(3) The Nuclear Treaty Manager shall monitor the reporting of all U.S. Lead Agency declarations in the APRS and their aggregation into the initial AP Declaration. When the interagency review of this initial declaration is required, the Nuclear Treaty Manager shall request, receive, and verify the necessary information; validate necessary information with the U.S. Lead Agencies as necessary; and disseminate initial AP Declarations and related information to the DoD Components in a timely, secure manner.

(4) The DoD Components shall review the initial AP Declaration and identify those facilities that must be eliminated from the list to prevent IAEA access (under Reference (d)) to any location, site, or facility or associated information or activity of direct national security significance. Each DoD Component shall make this determination in accordance with its specific security requirements as described in the introductory paragraph to this enclosure. If essential information required for making this determination for any declarable activity is not available during this review, or if a security vulnerability assessment cannot be completed as necessary during the time available, then the DoD Component shall notify the Nuclear Treaty Manager that the potential declaration shall be excluded under the NSE from the initial AP Declaration and electronic reporting into the APRS until such time that the required information is available and a determination can be made.

(5) The DoD Components shall conclude their reviews of the initial AP Declaration within 150 calendar days of receipt from the Nuclear Treaty Manager, or as otherwise specified. At the conclusion of this review, the designated implementation and compliance review managers shall notify the Nuclear Treaty Manager through the appropriate chains of command of:

(a) Identification of proposed declarable activities requiring exclusion under the NSE.

(b) Completion of necessary security vulnerability assessments, or identification of proposed declarable activities still needing assessment and, therefore, requiring exclusion from the initial AP Declaration under the NSE.

(c) Special requirements for managed access at or near specific proposed declarable activities.

(d) Requirements for security and counterintelligence training to protect DoD Component equities at or near proposed declarable activities.

(6) The Nuclear Treaty Manager shall consolidate the DoD Components' requirements into a summary report identifying those proposed declarable activities to be excluded from the initial AP Declaration and eliminated from the APRS. This report should document those proposed declarable activities where the Department of Defense requires that specific managed access procedures be implemented by the U.S. host team to protect DoD interests in accordance with Reference (f). The Nuclear Treaty Manager shall verify this summary report with the DoD Components and submit it to the USD(AT&L) for endorsement, with copies to the USD(P) and the Chairman of the Joint Chiefs of Staff for review and documentation of DoD requirements.

(7) Based on consultation with the USD(P) and the Chairman of the Joint Chiefs of Staff, the Nuclear Treaty Manager shall issue the DoD NSE requirements into the APRS to exclude proposed activities from the initial AP Declaration. The Nuclear Treaty Manager shall certify these requirements to the U.S. Lead Agencies, as necessary. The Nuclear Treaty Manager shall also verify that the NSE has been applied as required.

(8) Issues related to application of the NSE by the Department of Defense, or a DoD Component, shall be addressed in accordance with References (b) and (f).

(9) In accordance with Reference (h), this report shall also enable the Nuclear Treaty Manager to assure the Secretary of Defense that the Department of Defense will be prepared to implement the AP. This will include assurance that information has been reviewed for information security and operations security (OPSEC) considerations and necessary security vulnerability assessments related to the initial AP Declaration have or will be completed; that requirements for managed access and for security and counterintelligence training have been established; and that the DoD Components shall be prepared to implement those procedures no later than 180 calendar days after entry into force of the AP.

d. Applying the NSE Under the AP During the Review of Periodic Updates to the AP Declaration. The Department of Defense shall review information from periodic data calls and proposed updates to the AP Declaration prior to updates being loaded to the APRS (see Enclosure 4). The DoD Components shall complete these periodic reviews and apply the NSE before any proposed updates to the AP Declaration are submitted to Congress for approval and subsequent transmittal to the IAEA.

(1) The Nuclear Treaty Manager shall monitor, request, and receive information from periodic data calls by U.S. Lead Agencies, as well as proposed updates to the AP Declaration through the APRS, based on capabilities and procedures established for DoD review of the initial AP Declaration. The Nuclear Treaty Manager shall verify this information with the responsible U.S. Lead Agencies, as necessary, and shall promptly disseminate it to the DoD Components.

(2) The DoD Components shall review proposed updates to the AP Declaration and identify those facilities that must be excluded from the list to prevent IAEA access under Reference (d) to any location, site, or facility or associated information or activity of direct national security significance. Each DoD Component shall make this determination according to its specific security requirements as described in the introductory paragraph of this enclosure. If the information required to make this determination for any declaration is not available during this review, then the DoD Component shall notify the Nuclear Treaty Manager that the declaration shall be excluded under the NSE from the AP Declaration and electronic reporting into the APRS until such time that the required information is available and a determination can be made.

(3) The DoD Component implementation and compliance review manager shall notify the Nuclear Treaty Manager through the appropriate chains of command of those proposed declarations to be excluded from electronic reporting to the APRS or of any proposed updates already entered into the APRS that require elimination under the NSE. The DoD Components shall also notify the Nuclear Treaty Manager that they have completed any necessary OPSEC and information security reviews and security vulnerability assessments and have updated requirements and procedures for managed access as well as security and counterintelligence training related to the proposed declaration or update.

(4) If a DoD Component identifies a declaration already entered into the APRS that requires elimination under the NSE, the DoD Component implementation and compliance review manager should notify the Nuclear Treaty Manager of the requirement for exclusion of that declaration from the APRS and the AP Declaration.

(5) The Nuclear Treaty Manager shall consolidate the DoD Components' notifications into a summary report to document the relevant DoD NSE requirements. This report shall be compiled and reviewed by the Nuclear Treaty Manager, verified by the DoD Components as the current DoD NSE requirement, and submitted to the USD(AT&L) for endorsement, with copies to the USD(P) and the Chairman of the Joint Chiefs of Staff. The Nuclear Treaty Manager shall record DoD exclusions to the proposed update in the APRS and/or notify the U.S. Lead Agencies responsible for the proposed updates of DoD exclusions, as necessary. The Nuclear Treaty Manager shall also verify that the NSE has been applied by the responsible U.S. Lead Agencies, as required. Conflicts related to the use of the NSE by the Department of Defense shall be addressed in accordance with References (b) and (f).

e. Applying the NSE to a Declared Activity Under the AP Due to a Change in Circumstances. At any time, a DoD Component may determine that the NSE must be applied to an activity already included in the AP Declaration because of a change in operations,

acquisitions, threats, vulnerabilities, security policies or requirements, or other circumstances in order to prevent IAEA access to a location, site, or facility or associated information or activity of direct national security significance. This change in circumstances may require that the declared activity be excluded for a defined time period or indefinitely. Some circumstances may also require that a declared activity be removed from the APRS as well as the AP Declaration.

(1) The DoD Component shall immediately notify the Nuclear Treaty Manager through the appropriate chains of command of the requirement to apply the NSE, specifying the declared activity to be excluded as well as the date(s), or duration, the NSE is required.

(2) The Nuclear Treaty Manager shall immediately review this requirement with the DoD Component and representatives of the USD(P) and the Chairman of the Joint Chiefs of Staff; document the requirement to apply the NSE in the DoD consolidated summary report; and forward the requirement to the USD(AT&L) for endorsement, with copies to the USD(P) and the Chairman of the Joint Chiefs of Staff. As required, the Nuclear Treaty Manager shall record DoD NSE requirements through the APRS and verify that the NSE has been applied.

(3) The USD(P) or the Chairman of the Joint Chiefs of Staff shall immediately notify the Department of State and the U.S. Lead Agencies with jurisdiction over the declaration (or other Federal officials) that the Department of Defense is applying the NSE to the declared activity.

(4) Issues related to DoD application of the NSE shall be addressed in accordance with References (b) and (f).

f. Applying the NSE Under the AP During Complementary Access. The Department of Defense shall apply the NSE to exclude IAEA complementary access under Reference (d) to current or former DoD-owned or -leased locations, sites, and facilities as well as associated information and activities of direct national security significance. The Department of Defense shall also apply the NSE to exclude any other activity, location, or information during complementary access where, even with managed access by a U.S. host team, inspection would result in IAEA access to a current or former DoD location, site, or facility or associated information or activities of direct national security significance.

(1) In accordance with References (f) and (h), the DoD Components shall define the requirements and develop procedures necessary for managing access at or near locations of their equities excluded under the NSE. These requirements for managed access shall be documented in the DoD consolidated summary report as described in paragraph 2.c.(6) of this enclosure.

(2) DoD host team members shall coordinate the managed access requirements of the affected DoD Component with the host team leader and the Nuclear Treaty Manager. DoD host team members shall also monitor the development and implementation of the inspection plan for the IAEA complementary access and ensure that any IAEA inspector activities do not compromise the DoD NSE or managed access requirements.

(3) As required and practical, DoD host team members shall communicate potential managed access issues from the affected DoD Component(s) to the Nuclear Treaty Manager and

the Chairman of the Joint Chiefs of Staff and seek to address the IAEA's requirements through other means. Where or when DoD host team members are advised or independently determine that managed access will not prevent IAEA access as required, they shall withhold consensus within the host team, exercise the DoD right to request an NSE of the affected activity, and elevate the decision to the appropriate forum for disposition.

(4) Time permitting, the Department of Defense shall address issues related to the application of the NSE in accordance with References (b) and (f). In the case that treaty timelines do not allow for formal resolution of issues related to the application of the NSE, DoD host team members shall, by default, apply the NSE until such time as the conflict can be resolved.

ENCLOSURE 4U.S.-IAEA AP REPORTING REQUIREMENTS

1. REPORTING PERIODS. Table 1 lists the required reporting periods for the United States to provide its initial AP Declaration and subsequent updates to the IAEA. These reporting periods establish the frequency of the periodic reviews and associated application of the NSE by the Department of Defense.

Table 1. AP Declarations and Reporting Requirements

<u>Declarations</u> ¹	<u>Reporting to the IAEA</u>
Initial AP Declaration ²	180 days after AP entry into force
Annual Update of the AP Declaration ³	May 15th of each year
Declaration of Imports and Exports of Nuclear Material	May 15th of each year
Declaration of Exports (Annex 2 equipment and non-nuclear materials)	Quarterly, to be provided within 60 days of the end of each quarter
Declaration of Nuclear Waste	180 days before processing is carried out; annual update by May 15th of each year
Declaration for Safeguards Effectiveness and Efficiency	United States and IAEA to establish timing and frequency
Declaration of Imports ⁴ (Annex 2 equipment and non-nuclear materials)	Within 60 days of the Agency's request
¹ The IAEA will have access to all declared locations. ² The initial AP Declaration is under Article 3(a) of Reference (d). ³ The annual update of the AP Declaration is under Article 3(b) Reference (d). ⁴ The Declaration of Imports is under Article 3(g) Reference (d). Since this Declaration of Imports would be used by the IAEA to verify another nation's declaration of its exports to the United States, the IAEA could request complementary access to the U.S. activity within 180 days of entry into force.	

2. DECLARABLE ACTIVITIES. The initial AP Declaration is to be made in accordance with Article 3(a) of Reference (d), and includes the following declarable activities specified under Article 2:

a. Nuclear fuel cycle-related research and development (R&D) activities not involving nuclear material carried out anywhere that are funded, specifically authorized, or controlled by or carried out on behalf of the USG (pursuant to Paragraph 2(a)(i) of Reference (d)).

- b. Design information for a site (pursuant to Paragraph 2(a)(iii) of Reference (d)).
- c. Scale of operations for each location engaged in Annex 1 activities (assembly or manufacture of nuclear and nuclear-related equipment (pursuant to Paragraph 2(a)(iv) of Reference (d))).
- d. Mines and concentration plants (pursuant to Paragraph 2(a)(v) of Reference (d)).
- e. Information -- including quantity, chemical composition, and use or intended use (both nuclear and non-nuclear) -- for source material that has not reached the composition or purity suitable for fuel fabrication or for being isotopically enriched. This must be declared for each location in the United States where inventory is greater than 10 metric tons of uranium and/or 20 metric tons of thorium, as well as for other locations with quantities of more than 1 metric ton; or the aggregate for the United States as a whole if the aggregate exceeds 10 metric tons of uranium or 20 metric tons of thorium (pursuant to Paragraph 2(a)(vi)(a) of Reference (d)).
- f. Nuclear material exempt from safeguards under Articles 37 or 36(b) of Reference (c) (pursuant to Paragraph 2(a)(vii) of Reference (d)).
- g. General plans for the next 10 years of development of the nuclear fuel cycle, when approved by U.S. officials (pursuant to Paragraph 2(a)(x) of Reference (d)).
- h. R&D not involving nuclear material specifically related to enrichment or the reprocessing of nuclear fuel or waste carried out anywhere in the United States but not funded, specifically authorized, controlled by, or carried out on behalf of the United States (pursuant to Paragraph 2(b)(i) of Reference (d)).

3. PROVISIONS NOT COVERED. The initial AP Declaration will not cover the following provisions in Article 2 of Reference (d) (see Table 1 for these reporting deadlines):

- a. Efficiency and effectiveness of safeguards (pursuant to Paragraph 2(a)(ii) of Reference (d)).
- b. Exports of nuclear material (pursuant to Paragraph 2(a)(vi)(b) of Reference (d)).
- c. Imports of nuclear material (pursuant to Paragraph 2(a)(vi)(c) of Reference (d)).
- d. Nuclear waste reprocessing (pursuant to Paragraph 2(a)(viii) of Reference (d)).
- e. Exports of Annex 2 equipment or non-nuclear material (pursuant to Paragraph 2(a)(ix)(a) of Reference (d)).
- f. Imports of Annex 2 equipment or non-nuclear material. An AP Declaration will only be made when the IAEA requests this information from the United States. Since the AP Declaration would be used by the IAEA to verify another nation's declaration of its exports to

the United States, the IAEA request could occur within 180 days of entry into force (pursuant to Paragraph 2(a)(ix)(b) of Reference (d)).

g. Activities at locations outside of declared sites (pursuant to Paragraph 2(b)(ii) of Reference (d)).

GLOSSARY

DEFINITIONS

The following terms and their definitions shall be used for the purpose of this Instruction.

activities of direct national security significance. Any current or former DoD Component activity associated with military, national security, or homeland defense capability or intent including but not limited to: operations and training; intelligence; materiel production, maintenance, and supply; research, development, test, and evaluation; and infrastructure support, manning, or readiness.

AP Declaration. A list of those peaceful nuclear or nuclear-related activities disclosed by the United States to the IAEA for verification, pursuant to Article 2 of Reference (d). The IAEA may request complementary access to verify the completeness or correctness of declared activities.

APRS. The Web-based, unclassified virtual private network and database management system developed and operated by the Department of Commerce, for collecting, processing, storing, and distributing AP Declarations and associated information. The APRS shall be used to aggregate all declared activities submitted by the U.S. Lead Agencies into a proposed AP Declaration, or subsequent update, for interagency reviews and approvals.

at or near. With regard to IAEA access, the proximity (or relative position, space, or time) of DoD locations, sites, or facilities or associated information or activities of direct national security significance to an eligible or potentially eligible facility under Reference (c); or a declared or potentially declarable activity under Reference (d).

EFL. The list of facilities containing special fissionable material, or nuclear source material, that the United States makes eligible for IAEA safeguards pursuant to Article 1(b) of Reference (c). A facility is subject to IAEA safeguards when selected from the list by the IAEA.

host team. The group of designated USG representatives responsible for accompanying and negotiating with the IAEA inspection team during a complementary access visit under the AP.

IAEA complementary access visit or inspection. The exercise of the IAEA's access rights as set forth in Articles 4 to 6 of Reference (d). Access provided by the United States to IAEA inspectors in accordance with the provisions of the AP shall be:

To assure the absence of undeclared nuclear material and activities at sites, mines, concentration plants, and other locations where nuclear material has been declared.

To resolve a question on the correctness or completeness of the information provided by the United States pursuant to Article 2 of Reference (d), or to resolve an inconsistency relating to that information.

To confirm, for IAEA safeguards purposes, the declaration of the decommissioned status of a facility where nuclear material was customarily used or a location outside such facilities.

IAEA safeguards. Defined in Reference (c).

information associated with activities of direct national security significance. Any unclassified or classified information (including data, text, drawings, or graphics) that is communicated or recorded in any form (including hardcopy, electronic or softcopy, verbal, or as imagery, signals, or materials) related to national security or homeland defense, including but not limited to: military operations or training; intelligence; materiel production, maintenance, or supply; research, development, test, or evaluation; infrastructure or personnel.

initial AP Declaration. The first AP Declaration to be submitted to Congress for approval and subsequent transmittal to the IAEA. The initial AP Declaration (see Enclosure 4) is required to be reported to the IAEA no later than 180 days following entry into force of the AP.

inspector activities. Those activities described in Article 6 of Reference (d).

Integrated Safeguards. A regime describing the entry into force of References (c) and (d). The provisions of the AP are then applied in conjunction with those of Reference (c).

locations, sites, or facilities or associated information or activities of direct national security significance. Any current or former DoD-owned, -leased, -funded, or -used space, structure, facility, installation, or land occupied by, or associated with, national security or homeland defense, including but not limited to: military operations or training; intelligence; materiel production, maintenance, or supply; research, development, test, or evaluation; infrastructure or personnel.

managed access. Procedures outlined in Reference (g) to avoid compromise of national security, proprietary, or proliferation-sensitive business information, or safety requirements while facilitating IAEA access to activities, locations, or information relevant to demonstrating U.S. compliance with Integrated Safeguards.

NSE. The unilateral right of any U.S. Lead Agency with national security equities to exclude IAEA from access to locations, sites, or facilities, or associated information or activities, of direct national security significance (References (c), (d), and (f)).

Nuclear Treaty Manager. A Treaty Manager for oversight of implementation and compliance for each existing and prospective arms control agreement covered by Reference (b).

security vulnerability assessment. Assessments conducted by the Department of Defense pursuant to Reference (i) to determine the risk of exposure of DoD locations, sites, or facilities,

or associated information or activities, of direct national security significance to IAEA inspectors during an inspection under the AP.

U.S. Lead Agencies. Those Executive Agencies designated in Reference (f) as having jurisdiction over locations of declarable activities and/or national security equities as well as responsibility for implementation of the AP's requirements to provide information or declarations to the IAEA and/or to arrange for and provide complementary access. The U.S. Lead Agencies are the Departments of Energy, Defense, Commerce, and State, the Central Intelligence Agency, and the Nuclear Regulatory Commission.