

**SUBJECT: VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL  
PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY**

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1. **OBJECTIVES.**

- a. To define requirements for Department of Energy (DOE) compliance with—
- (1) the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States (Agreement),
  - (2) the Protocol to the Agreement (Original Protocol),
  - (3) the Additional Protocol to the Agreement (Additional Protocol), and
  - (4) the Subsidiary Arrangements to the Agreement and Additional Protocol (Subsidiary Arrangements).

NOTE: Voluntary Offer Agreement (VOA) will be used for references to both the Agreement and the Original Protocol.

- b. To prescribe policies and responsibilities for ensuring compliance with the VOA, Additional Protocol, and Subsidiary Arrangements.

2. **CANCELLATION.** DOE O 142.2, Safeguards Agreement and Protocol with the International Atomic Energy Agency, dated 1-7-04. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Contractor requirement documents (CRDs) that have been incorporated into or attached to a contract remain in effect until the contract is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. **APPLICABILITY.**

- a. **DOE Elements.** Except for exclusions in paragraph 3c, this Order applies to all Departmental elements with responsibility for programs that must adhere to protocols associated with Agreement, Original Protocol, Additional Protocol, and Subsidiary Arrangements. See Attachment 1.

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees and contractors comply with their respective responsibilities under this Order. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of

Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

- b. DOE Contractors. Except for the exclusions in paragraph 3c, the CRD (Attachment 2) sets forth requirements for contractors whose missions include adherence to protocols associated with the Agreement, Original Protocol, Additional Protocol, and Subsidiary Arrangements. The CRD will apply to the extent set forth in each contract.
  - c. Exclusions. In accordance with the responsibilities and authorities assigned by Executive Order 12344 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Director will implement and oversee requirements and practices pertaining to this Order for activities under the Director's cognizance.
4. REQUIREMENTS. Specific references are available in the VOA, Additional Protocol, and Subsidiary Arrangement at locations cited. See references (paragraph 7) for online availability.
- a. General.
    - (1) Under the VOA, all DOE facilities where source or special fissionable material is stored or used in operations are eligible for application of traditional IAEA safeguards. [See definitions in paragraphs 6y and 6z of this Order and VOA articles 1(b), 2(a), 2(c), and 3(b)]
    - (2) National security facilities, activities, and information associated with activities with direct national security significance to the United States are excluded from IAEA inspection and complementary access. [VOA, article 2; Additional Protocol, articles 1b and 1c; P.L. 109-401, Section 261(a)]
    - (3) Every reasonable effort will be made to ensure that IAEA inspections and complementary access visits can be carried out even when increased security condition (SECON) levels are in effect at DOE facilities [DOE M 470.4-1, *Safeguards and Security Program Planning and Management*, dated 8-26-05 and NNSA Policy Letter (NAP)- 9A, *SECON Implementation*, dated 1-31-05]

NOTE: Complementary access visits will be considered inspections (to comply with requirements of DOE O 142.3, Unclassified Foreign Visits and Assignments, dated 6-18-04). For the purposes of this Order, however, inspections are formal visits by the IAEA associated with the VOA and complementary

access visits are formal visits associated with the Additional Protocol.

- (4) All activities subject to declaration<sup>1</sup> under Article 2(a) of the Additional Protocol taking place at locations owned, operated, or leased by or for DOE, including NRC-licensed or certified locations on DOE installations and non-military locations on installations where naval reactor fuel is stored or processed, shall be included on the DOE portion of the Additional Protocol. For purposes of implementing the AP at the latter locations, DOE shall act in coordination with the Department of Defense. (Additional Protocol, article 2a).

NOTE: The declaration excludes activities with direct national security significance to the United States or locations or information associated with such activities.

- (5) Implementation of VOA, Additional Protocol, and Subsidiary Arrangements will be consistent with prudent management practices (e.g., avoiding unnecessary interference in operations at DOE facilities, sites, or locations and minimizing costs). [VOA, articles 4(c) and 6(c)].

b. IAEA Access.

- (1) IAEA inspectors will be entitled to carry out activities according to the provisions of the VOA, Additional Protocol, Subsidiary Arrangements, and applicable facility attachments.
- (2) IAEA inspectors will be notified of applicable health, safety, security, and export control procedures that they must observe as well as procedures for DOE inspection of IAEA equipment.
- (3) Complementary access and inspections by the IAEA will be authorized under the terms of the VOA and the Additional Protocol and in accordance with appropriate legislation, interagency guidance, and U.S. Government and DOE regulations when the following requirements have been met. [VOA, article 1(a); Additional Protocol, articles 1c and 7; P.L.109-401, United States and India Nuclear Cooperation Promotion Act 2006, Title II, Subtitle G]
  - (a) Security and counterintelligence training and preparation have been completed for declared locations of direct national security

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<sup>1</sup> A general description of facilities, information, sites, operations, activities, materials, and locations to be made available for IAEA inspection. Activities of direct national security significance and associated locations and activities are excluded from declaration. Article 2 of the Additional Protocol defines specific elements of a declaration.

significance to the United States. (P.L. 109-401, Subtitle B, sections 221, 222, 223, 224)

- (b) Security assessments of activities, locations, and information of direct national security significance to the United States have been completed. [P.L. 109-401, section 273(1)]
- (4) IAEA inspectors will not be provided access to DOE facilities or activities and associated locations of direct national security significance to the United States. [VOA, article 1(a); Additional Protocol, article 1(b); P.L. 109-401, Section 261(a)]

NOTE: Exceptions can be permitted where managed access measures are applied. [Additional Protocol, articles 1(c) and 7]

- (5) Environmental sampling will be governed by applicable Presidential guidance, laws, and DOE directives. (Additional Protocol, article 9; P.L. 109-401, Subtitle E, Sections 251, 252, 253, 254)

c. Information Security.

- (1) National security information may be transmitted to the IAEA only on a controlled basis and then only at the minimum necessary to comply with the VOA (for an example, see VOA, article 8; for the definition of national security information, see Executive Order 12958, as amended).
- (2) Release of classified and sensitive unclassified information is restricted as follows.
  - (a) Restricted Data or Formerly Restricted Data must not be revealed, released, or transmitted to the IAEA. [Atomic Energy Act of 1954, P.L. 83-703, as amended; P.L. 109-401 section 261(c)]
  - (b) Unclassified Controlled Nuclear Information is restricted from release or transmittal except as prescribed in DOE M 471.1-1, *Identification and Protection of Unclassified Controlled Nuclear Information Manual*, dated 10-23-01.
  - (c) Sensitive nuclear technology information must not be revealed or released except as authorized in Title 10 Code of Federal Regulations (CFR) 810, "Assistance to Foreign Atomic Energy Activities."
  - (d) Export controlled information and information controlled under the Department of State's (State's) International Traffic in Arms Regulations (ITAR) and the Department of Commerce's (Commerce's) Export Administration Regulations (EAR), the Nuclear Regulatory Commission's Export and Import of Nuclear

Equipment and Materials Regulations, and the Department of Energy's regulations on Assistance to Foreign Atomic Energy Activities (Part 810) must not be revealed or released except as authorized under the relevant regulations. (22 CFR 120-129, "International Traffic in Arms Regulations"; 15 CFR 730-774, "Export Administration Regulations"; 10 CFR 110, "Export and Import of Nuclear Equipment and Materials"; 10 CFR 810, "Assistance to Foreign Atomic Energy Activities.")

- (e) Information identified as "Confidential Foreign Government Information—Modified Handling Required" must be protected as mandated in DOE M 470.4-4, *Information Security*, dated 8-26-05 and then, only with the express approval of the applicable foreign government.
- d. Access Authorization Exceptions. Although heads of DOE field elements are not authorized to either approve or deny IAEA inspections or complementary access visits at DOE facilities, locations, or sites, some exceptions do apply, and the following requirements must be met. (See Additional Protocol, article 5 for access requirements.)
  - (1) When inspection or complementary access activities would result in compromise of Restricted Data or Formerly Restricted Data, the head of the field element is authorized to temporarily suspend the inspection and immediately notify the NNSA Office of International Regimes and Agreements,
    - (a) the cognizant Program Secretarial Officer (PSO) or
    - (b) the NNSA Deputy or Associate Administrator, and the Associate Administrator for Defense Nuclear Security.
  - (2) The Office of International Regimes and Agreements will notify the IAEA when an inspection or complementary access must be terminated or suspended pending implementation of an acceptable security plan that protects the information from disclosure.

## 5. RESPONSIBILITIES.

- a. NNSA Deputy Administrator for Defense Nuclear Nonproliferation.
  - (1) Represents DOE before other Federal agencies, Congress, and the IAEA on matters pertaining to the VOA, Additional Protocol, and Subsidiary Arrangements.
  - (2) Participates in resolving proposed changes to the list of DOE facilities eligible for the application of safeguards under the VOA or the list of

DOE activities and associated locations declared under the Additional Protocol.

- (3) Addresses issues on proposed changes that have not been resolved by the Assistant Deputy Administrator of the Office of Nonproliferation and International Security, the PSO or the NNSA Deputy or Associate Administrator, and the Associate Administrator for Defense Nuclear Security.
- (4) When resolution is not achieved, refers the matter to the Under Secretary for Nuclear Security for resolution.
- (5) If the Under Secretary for Nuclear Security is unable to reach resolution, the matter is referred to the Office of the Secretary of Energy.

b. NNSA Assistant Deputy Administrator, Office of Nonproliferation and International Security.

- (1) Approves plans and procedures developed by the Director of the Office of International Regimes and Agreements for implementing the VOA, Additional Protocol, and Subsidiary Arrangements.
- (2) Participates in or designates representatives to participate with other Federal agencies and the Director of the Office of International Regimes and Agreements in policy development and decision making related to areas in which the VOA, Additional Protocol, or Subsidiary Arrangements can affect programs, activities, facilities, sites, or locations for which the Assistant Deputy Administrator is responsible.
- (3) Maintains the option to concur or not concur on all notifications to offices external to DOE regarding implementation of the VOA, Additional Protocol, or Subsidiary Arrangements affecting programs, activities, facilities, sites, or locations under his/her cognizance.
- (4) Represents DOE on the IAEA Steering Committee (ISC).
- (5) For the resolution of proposed changes to the list of DOE facilities eligible for the application of safeguards under the VOA or the list of DOE activities and associated locations declared under the Additional Protocol, participates with
  - (a) the cognizant PSOs (for non-NNSA facilities) or
  - (b) the NNSA Deputy or Associate Administrator (for NNSA facilities), and the Associate Administrator for Defense Nuclear Security.

c. Director, NNSA Office of International Regimes and Agreements.

- (1) Serves as the primary DOE information resource on implementation of the VOA, Additional Protocol, and Subsidiary Arrangements.
  - (a) Provides policy and technical guidance on IAEA safeguards.
  - (b) Coordinates with cognizant PSOs, NNSA Deputy and Associate Administrators, and the Associate Administrator for Defense Nuclear Security on implementation plans, procedures, and policy development related to implementation of the VOA, Additional Protocol, and Subsidiary Arrangements.
  - (c) Coordinates with cognizant PSOs, NNSA Deputy and Associate Administrators, and the Associate Administrator for Defense Nuclear Security in participation on formulating Presidential guidance and interagency implementing procedures.
  - (d) Coordinates preparation of the initial DOE declaration and the annual, quarterly, and ad hoc updates to the declaration. (Additional Protocol, articles 2 and 3)
  - (e) Coordinates DOE certification of national security exclusion, managed access, declared locations, site security assessments, and added locations. (P.L. 109-401 Subtitle G)
  - (f) Provides assistance, outreach, education, and training programs for implementing the VOA, Additional Protocol, and Subsidiary Arrangements.
- (2) Monitors international safeguards aspects of VOA, Additional Protocol, and Subsidiary Arrangement implementation to ensure that potential problems are identified and referred to responsible and cognizant DOE elements for resolution.
- (3) Serves as the DOE representative to the ISC Subcommittee on International Safeguards and Monitoring (SISM) and designates the DOE representative to the Subgroup on IAEA Safeguards in the United States (SISUS).
  - (a) Leads the DOE Negotiating Team delegation to establish Subsidiary Arrangements for DOE facilities selected by the IAEA for the application of VOA safeguards.
  - (b) Leads the DOE Negotiating Team in any bilateral discussions with the IAEA regarding implementation of the VOA or the Additional Protocol.

- (c) Requests the participation of other potentially affected DOE organizations in Negotiating Team activities, as appropriate.

NOTE: The Director may delegate these responsibilities to staff of the Office of International Regimes and Agreements.

- (4) Participates with other Federal agencies and appropriate DOE organizations (e.g., PSOs; NNSA Deputy and Associate Administrators; field element representatives; and/or the offices of Defense Nuclear Counterintelligence, Counterintelligence, and Defense Nuclear Security) in policy development and decision making related to the VOA, Additional Protocol, or Subsidiary Arrangements, including—
  - (a) designation and acceptance of IAEA inspectors;
  - (b) IAEA inspectors' access to DOE activities, facilities, locations, and sites; and
  - (c) scope of inspection, complementary access, and inspector activities.
- (5) Provides channels for communication between DOE and other entities such as State, Commerce, the Nuclear Regulatory Commission (NRC), and DoD regarding application of the VOA, Additional Protocol, and Subsidiary Arrangements.
- (6) Establishes channels for transmission of VOA safeguards documents to State.
- (7) Establishes channels for transmission of Additional Protocol declarations, amplifications, and clarifications to Commerce and other Federal agencies.
- (8) Provides concurrent notification of upcoming IAEA inspections, complementary access visits, or reporting obligations to—
  - (a) the PSOs or NNSA Deputy or Associate Administrators responsible for affected DOE facilities, locations, and sites and
  - (b) managers of affected DOE facilities, locations, and sites.

NOTE: Notification of upcoming complementary access visits will be given by the DOE Office of Emergency Operations.

- (9) Participates with the Chief Financial Officer and other heads of Headquarters elements in developing policies and procedures for recovering the costs of special requests from the IAEA. (VOA, article 14)



- (10) As appropriate and with due regard to the effectiveness and efficiency of representation, ensures that interested DOE organizations are provided the opportunity to participate in interagency policy meetings related to implementing the VOA, Additional Protocol, and Subsidiary Arrangements. In addition to the Office of Nonproliferation and International Security, organizations represented may include—
  - (a) potentially affected PSOs,
  - (b) NNSA Deputy and Associate Administrators,
  - (c) the Associate Administrator for Defense Nuclear Security, and
  - (d) managers of DOE field elements responsible for affected activities, facilities, locations, or sites.
- (11) Maintains a current list of DOE facilities eligible for the application of VOA safeguards. (VOA, article 39)
  - (a) Informs affected PSOs, NNSA Deputy and Associate Administrators, and the Associate Administrator for Defense Nuclear Security of proposed additions to or deletions from the list.
  - (b) Notifies the responsible PSO or NNSA Deputy or Associate Administrator responsible for affected DOE facilities of IAEA selections for application of VOA safeguards.
- (12) Maintains current and past DOE declarations under the Additional Protocol and a list of locations associated with activities included in the declarations.
- (13) Advises appropriate PSOs, NNSA Deputy and Associate Administrators, and heads of DOE field elements of actions necessary to satisfy DOE's obligations under the VOA, Additional Protocol, and Subsidiary Arrangements.
- (14) Issues guidance for accepting IAEA inspectors' accreditation credentials and for hosting and escorting IAEA inspectors at DOE facilities, locations, and sites.
- (15) Receives from heads of DOE field elements safeguards documents and Additional Protocol declarations that have been prepared and approved pursuant to paragraph 5h of this Order.
  - (a) Transmits safeguards documents and Additional Protocol declarations to State and/or Commerce, as appropriate, for transmittal to the IAEA.

- (b) Reviews and coordinates safeguards documents and Additional Protocol declarations with the Associate Administrator for Defense Nuclear Security and with cognizant PSOs (for non-NNSA locations and facilities) or NNSA Assistant or Associate Administrator (for NNSA locations and facilities) before release from DOE.
- (16) Ensures that nuclear material declared under the VOA is at all times at least equivalent in amount and composition to any material that would be subject to IAEA safeguards under other suspended agreements between the United States, the IAEA, and possibly other parties. (VOA, article 22)
- (17) Prepares and issues guidance documents as required to facilitate implementation of this Order.
- (18) Has lead DOE responsibility for fulfilling duties assigned to DOE as a responsible Agency under the Interagency Procedures.
- (19) Obtains agreement with the PSO (for non-NNSA facilities) or the NNSA Deputy or Associate Administrator (for NNSA facilities) and the Associate Administrator for Defense Nuclear Security in response to an organization's request that—
  - (a) a DOE facility or activity be added to the list of facilities eligible for the application of safeguards under the VOA (VOA, articles 2 and 34) or
  - (b) a DOE activity previously undeclared under the Additional Protocol be considered for addition to the Additional Protocol declaration. (Additional Protocol, articles 2 and 3)

NOTE: When agreement is not obtained, refers the matter to the Assistant Deputy Administrator, Office of Nonproliferation and International Security.

- (20) Notifies the SISUS of proposed additions to the list of DOE facilities eligible for application of safeguards under the VOA or the list of DOE activities declared under the Additional Protocol and their associated locations. [paragraph 5c(21), below]
- (21) Obtains agreement with the PSO (for non-NNSA activities, facilities, locations, or sites) or the NNSA Deputy or Associate Administrator (for NNSA activities, facilities, locations, or sites) and the Associate Administrator for Defense Nuclear Security in response to an organization's request for deletion of—

- (a) a DOE facility from the list of DOE facilities eligible for application of safeguards under the VOA (VOA, article 34) or
- (b) a DOE activity and/or its associated location from declarations under the Additional Protocol because it is scheduled to be engaged in activities with direct national security significance to the United States. (Additional Protocol, article 1b)

NOTE: When agreement is not obtained, refers the matter to the Assistant Deputy Administrator of the Office of Nonproliferation and International Security.

- (22) Notifies the SISUS of proposed deletions from the list of DOE facilities eligible for application of VOA safeguards or the list of DOE activities and associated locations available for complementary access, per paragraph 5c(23), below. (Additional Protocol, article 5)
- (23) Maintains procedures for issuing notifications regarding upcoming IAEA inspections and complementary access visits at DOE facilities, locations, or sites.
- (24) Participates with the PSOs, NNSA Deputy or Associate Administrators, and heads of DOE field elements to ensure that new facility planning will include, from inception, IAEA safeguards requirements and determination of whether the facility would be placed on the eligible facilities list.
- (25) Transmits the current list of IAEA inspectors formally designated for service in the United States to heads of DOE field elements responsible for DOE facilities, locations, and sites subject to IAEA inspections or complementary access visits. (VOA, article 9; Additional Protocol, article 11)
- (26) Notifies heads of DOE field elements when site/facility management contractors are affected by this Order and the accompanying CRD (Attachment 2).
- (27) Where complementary access to declared DOE activities cannot be granted without disclosing protected information, determines, in cooperation with the PSO (for non-NNSA locations) or the NNSA Associate or Deputy Administrator (for NNSA locations) and the Assistant Administrator for Defense Nuclear Security, whether all reasonable efforts have been made to satisfy IAEA requirements at adjacent locations or through other means without delay. (Additional Protocol, articles 1c and 7)

- (28) Verifies the portion of the DOE declaration concerning export and import of uranium, thorium, and specified equipment and non-nuclear material. [Additional Protocol, articles 2a(vi)(b), 2a(vi)(c), 2a(ix)(a), and 2a(ix)(b)]
  - (29) Provides assistance, outreach, education, and training programs for implementing declaration requirements as described in the Additional Protocol, articles 2a(vi)(b), 2a(vi)(c), 2a(ix)(a), and 2a(ix)(b).
  - (30) Provides guidance and responds to questions concerning the application of DOE export regulations and U.S. export control laws to DOE activities involving the IAEA.
  - (31) Conducts reviews concerning the release of nuclear technology and information or other export controlled information to the IAEA. (10 CFR 810)
  - (32) Develops procedures for the release of export-controlled information to the IAEA.
  - (33) Participates in resolving questions regarding the appropriateness of providing specific export controlled information or technology to the IAEA.
- d. Director, Office of Security and Safety Performance Assurance develops and maintains policies and procedures for reporting nuclear materials transactions, material balances, and inventory information to and from the Nuclear Materials Management and Safeguards System, as necessary for reporting such information to the State for transmittal to the IAEA. (VOA, articles 7 and 8)
- e. Associate Administrator for Defense Nuclear Security (NNSA).
- (1) Develops and maintains procedures for controlled release of classified national security information and other sensitive DOE information to the IAEA.
  - (2) Provides safeguards and security program guidance to DOE field elements to facilitate IAEA activities while protecting and accounting for nuclear materials and sensitive information.
  - (3) Apprises the Office of International Regimes and Agreements of interactions with other Federal agencies relative to the VOA or the Additional Protocol, as appropriate.
  - (4) In consultation with the Office of International Regimes and Agreements, develops and maintains procedures for controlled release of sensitive nuclear technology and export-controlled information to the IAEA.

- (5) Reviews and provides to the head of the field element comments on site safeguards and security plans for IAEA inspections and complementary access visits to DOE facilities, locations, and sites.
  - (6) Monitors implementation of domestic safeguards and security requirements as they pertain to VOA, the Additional Protocol, and Subsidiary Arrangements and ensures that potential problems are identified to responsible PSO's, NNSA Deputy or Associate Administrators, and to field elements.
  - (7) Participates with the Director of the Office of International Regimes and Agreements and the responsible PSO's NNSA Deputy or Associate Administrator in determining whether a facility should be placed on or deleted from the list of DOE facilities eligible for application of safeguards under the VOA or whether an activity should be added to or deleted from the list of DOE activities and associated locations declared under the Additional Protocol.
  - (8) Participates with the Office International Regimes and Agreements to certify NNSA declared activities for national security exclusion, managed access, declared locations, site security assessments, and added locations. (P.L. 109-401 Subtitle G)
  - (9) When complementary access to declared activities cannot be granted without disclosing protected information, consults with the responsible PSO or NNSA Deputy or Associate Administrator and the Office of International Regimes and Agreements to determine whether reasonable efforts have been made to satisfy IAEA requirements at adjacent locations or through other means, without delay. (Additional Protocol, articles 1b, 1c, 5b, and 7)
- f. Director, Office of Counterintelligence. For non-NNSA facilities, locations, and sites, provides graded level of counterintelligence support to headquarters and field elements involved in IAEA activities in accordance with potential risks.
- g. Chief, Office of Defense Nuclear Counterintelligence (NNSA). For NNSA facilities, locations, and sites, provides graded level of counterintelligence support to headquarters and field elements involved in IAEA activities in accordance with potential risks.
- h. Program Secretarial Officers and NNSA Deputy and Associate Administrators.
- (1) Oversee field implementation of the VOA, Additional Protocol, and Subsidiary Arrangements to ensure effectiveness without adverse impact on DOE facility, location, or site operations, programs, or activities.

- (2) Participate in meetings of the SISM or SISUS on matters that can significantly affect DOE programs, activities, facilities, locations, and sites, as necessary and appropriate.
- (3) Apprise the Office of International Regimes and Agreements of interactions with other Federal agencies on VOA and Additional Protocol matters.
- (4) Participate, as necessary and appropriate, with DOE representative on the Negotiating Team.
- (5) Participate, as appropriate, with the Office of International Regimes and Agreements in preparing certifications for DOE activities declared under the Additional Protocol regarding the national security exclusion, managed access, declared locations, site security assessments, and added locations as specified in Subtitle G of P.L. 109-401.
- (6) Where complementary access to declared DOE activities cannot be granted without disclosing protected information (Additional Protocol articles 1(b), 1(c), and 7), consults with or the Associate Administrator for Defense Nuclear Security and the Office of International Regimes and Agreements to determine whether all reasonable efforts have been made to satisfy IAEA requirements at adjacent locations or through other means without delay. [Additional Protocol, article 5b];
- (7) Upon notification of IAEA actions from the Director of the Office of International Regimes and Agreements, direct responsible heads of DOE field elements to implement appropriate responses consistent with VOA, Additional Protocol, Subsidiary Arrangements, and DOE regulations and directives.
- (8) Review and approve safeguards documents and input for Additional Protocol declarations prepared by DOE field elements.
- (9) For programs under the PSO's or NNSA Deputy or Associate Administrator's responsibility whose activities trigger application of safeguards under the VOA or the Additional Protocol, ensure that field resources and budgets are adequate to meet—
  - (a) DOE's IAEA responsibilities under the VOA, Additional Protocol, Subsidiary Arrangements, and applicable facility attachments and
  - (b) the cost of satisfying IAEA obligations to the extent that the PSO's or NNSA Deputy or Associate Administrator's activities are the basis for the IAEA obligations.

- (10) Upon initiation of a procurement request or at any time that it is known that a contract will fall within the scope of this Order, advise heads of DOE field elements to ensure that appropriate IAEA- provisions are included in contracts.
- (11) Ensure that employees and subordinate field elements comply with the requirements of this Order and the VOA, Additional Protocol, Subsidiary Arrangements, and Interagency Procedures.
- (12) Participate with the Director of the Office of International Regimes and Agreements and the Associate Administrator for Defense Nuclear Security, in determining whether a DOE facility should be placed on or deleted from the list of DOE facilities eligible for application of IAEA safeguards under the VOA or whether an activity should be added to or deleted from the list of DOE activities and associated locations declared under the Additional Protocol.
- (13) Give written notice to the Director of the Office of International Regimes and Agreements whenever a facility under the PSO's or NNSA Deputy or Associate Administrator's purview can be added to or should be deleted from the list of DOE facilities eligible for application of IAEA safeguards or should be deleted from the list because the facility will be involved in activities with direct national security significance to the United States.
- (14) Give written notice to the Director of the Office of International Regimes and Agreements whenever a DOE activity and associated location under the PSO's or NNSA Deputy or Associate Administrator's purview can be added to the list of DOE activities and associated locations declared under the Additional Protocol or should be deleted from the list because of the initiation of activities with direct national security significance to the United States.

i. Chief Financial Officer.

- (1) Participates with the Director, Office of International Regimes and Agreements, and other appropriate PSOs in developing principles and procedures for recovering eligible costs of IAEA special requests. (VOA, article 14)

NOTE: In general, the United States will bear the expenses incurred in implementing VOA, Additional Protocol, and Subsidiary Arrangement responsibilities. However, if DOE or its contractors incur extraordinary expenses in responding to a specific request, DOE may request that the IAEA reimburse those expenses, provided the IAEA has agreed in advance to do so.

- (2) Ensures that field budget calls will include the requirement that field elements identify and budget for costs associated with DOE implementation of the VOA, Additional Protocol, and Subsidiary Arrangements.

j. Heads of DOE Field Elements.

- (1) Prepare safeguards documents and input for IAEA safeguards under the VOA, and site declarations for inclusion in DOE declarations under the Additional Protocol, in accordance with the VOA, Additional Protocol, and Subsidiary Arrangements. (VOA articles 8, and 42-66; Additional Protocol, articles 2 and 3)
- (2) Review and approve VOA safeguards-related documents and input to the relevant PSOs or NNSA Deputy or Associate Administrators for review and then submit the documents and input to the Office of International Regimes and Agreements through appropriate channels.
- (3) Review and approve site Additional Protocol declarations for field element review for technical accuracy, information classification issues, proprietary and export controlled information, security concerns, and application of the national security exclusion (Additional Protocol, article 1b) before the information is submitted [Additional Protocol, articles 1b, 1c, 2, 3, and 7; P.L. 109-401, Subtitle G] to the Office of International Regimes and Agreements, which will coordinate the review and approval process by

the cognizant PSO and or the cognizant Deputy or Associate Administrator, and the Associate Administrator for Defense Nuclear Security.

- (4) Provide to the Office of International Regimes and Agreements documentation certifying that—
  - (a) managed access provisions will be implemented in accordance with the appropriate and necessary interagency guidance and regulations [Additional Protocol, articles 1c and 7; P.L. 109-401, Subtitle G];
  - (b) necessary security and counterintelligence training and preparation have been completed for declared locations of direct national security significance to the United States (P.L. 109-401, Subtitle G) and
  - (c) necessary site security assessments activities, locations, and information of direct national security significance to the United



States have been completed before the site declaration is submitted for review by Headquarters elements. (P.L. 109-401, Subtitle G)

- (5) For heads of non-NNSA field elements, provide direction to and oversight of non-NNSA contractors to ensure compliance with the VOA, Additional Protocol, Subsidiary Arrangements, applicable facility attachments, and the Interagency Procedures.
- (6) For heads of NNSA field elements, provide direction to and oversight of NNSA contractors to ensure compliance with the VOA, Additional Protocol, Subsidiary Arrangements, applicable facility attachments, and the Interagency Procedures.
- (7) Follow direction from the responsible PSO or NNSA Deputy or Associate Administrator with responsibility for activities, facilities, locations, or sites that are eligible for application of IAEA safeguards or inclusion in declarations.
- (8) Refer questions on how to respond to actions or requests under the VOA, Additional Protocol, and Subsidiary Arrangements to the Director of Office of International Regimes and Agreements and the Associate Administrator for Defense Nuclear Security.
- (9) Designate to the Office of International Regimes and Agreements DOE field element participants and contractor representatives to serve as a team that addresses IAEA safeguards matters.
  - (a) The team is to include one or more points of contact and an Additional Protocol coordinator for the field element.
  - (b) The point of contact and coordinator can be the same person.
- (10) Ensure that implementation of VOA, Additional Protocol, and Subsidiary Arrangements requirements are consistent with prudent management practices (e.g., avoiding unnecessary interference in site operations of DOE facilities, locations, and sites and minimizing costs).
- (11) Ensure that site/facility management contractors notify responsible DOE or NNSA field elements when—
  - (a) facilities excluded from inspection or reporting under the VOA because of activities with direct national security significance to the United States terminate those activities and the facility can be considered for addition to the list of DOE facilities eligible for application of IAEA safeguards;
  - (b) negotiations or plans are initiated that could lead to a facility being judged to be engaged in activities with direct national security

significance to the United States and therefore requiring deletion from the list of DOE facilities eligible for application of IAEA safeguards;

- (c) locations or sites where declarable activities were excluded from complementary access by IAEA because of application of the national security exclusion in article 1b of the Additional Protocol but the reasons for applying article 1b of the Additional Protocol no longer exist, and the declarable activity can be considered for addition to the site Additional Protocol declaration; or
  - (d) negotiations or plans are initiated for deleting an activity and associated location from the DOE declaration list because of the presence of activities with direct national security significance to the United States.
- (12) Ensure that management contractors at facilities, locations, or sites with declarable activities collect, review, and submit site declarations for approval (via the Additional Protocol Reporting System). (Additional Protocol, articles 2 and 3)
- (13) Following field element approval, submit site declarations to the Office of International Regimes and Agreements, which will coordinate—
  - (a) technical review and approval by the PSO (for non-NNSA locations) or the NNSA Deputy or Associate Administrator approval (for NNSA locations) and
  - (b) security review and approval by the Associate Administrator for Defense Nuclear Security.
- (14) Upon initiating the procedure for possible addition of new or existing DOE facilities to the list of DOE facilities eligible for VOA safeguards, inform the responsible PSO or NNSA Deputy or Associate Administrator and the Director of the Office of International Regimes and Agreements when DOE facilities under the field element's cognizance are not associated with activities with direct national security significance to the United States.
- (15) Review the field element's information included in the DOE Additional Protocol annual, quarterly, and ad hoc declarations, as applicable.
- (16) Ensure compliance with relevant provisions of the Implementing Legislation (P.L. 109-401 Section 261 and Subtitle G):

- (a) Ensure that all activities proposed for inclusion in the DOE declaration are thoroughly reviewed for activities with direct national security significance to the United States.
  - (b) Conduct security assessments to determine whether application of managed access can acceptably mitigate risks of disclosing activities, information, and associated locations with direct national security significance to the United States.
- (17) Ensure that appropriate written notice is given to the responsible PSO or NNSA Deputy or Associate Administrator whenever a DOE facility on the list of those facilities eligible for VOA safeguards is to be deleted because of scheduled for activities with direct national security significance to the United States. (VOA, article 35)
- (18) Ensure that appropriate written notice is given to the Office of International Regimes and Agreements whenever an activity and associated location included in the Additional Protocol declaration should be deleted because of scheduled activities with direct national security significance to the United States, and notify
  - (a) the responsible PSO or
  - (b) the NNSA Deputy or Associate Administrator, and the Assistant Administrator for Defense Nuclear Security.
- (19) Before notice is given, conduct a security assessment to determine whether managed access can be used to mitigate risks associated with such activities.
- (20) Notify managers of affected DOE activities, facilities, locations, and sites of upcoming IAEA inspections and complementary access visits, and direct affected managers to—
  - (a) prepare for the inspection or complementary access visit as soon as practical to avoid hindrance to IAEA activities;
  - (b) keep files of current information readily available for the identification of IAEA inspectors designated for inspections and complementary access visits in the United States; and
  - (c) maintain current arrangements for IAEA inspectors' ready access and departure.
- (21) Notify and direct managers of affected DOE activities, facilities, locations, and sites to prepare appropriate information to satisfy upcoming IAEA reporting obligations.

- (22) Ensure that before IAEA inspectors enter a DOE facility, location, or site they are identified properly and are free to carry out activities as authorized by the VOA, Additional Protocol, Subsidiary Arrangements, and applicable facility attachment.
  - (a) Ensure that IAEA inspectors and personnel comply with applicable health, safety, and security procedures.
  - (b) Ensure that a plan and procedures are in place to provide security, health, and safety training to IAEA inspectors before commencing inspections or complementary access visits.
- (23) Exercise care to ensure that classified and other sensitive information provided to the IAEA and its inspectors is limited to information that must be provided under the terms of the VOA, Additional Protocol, Subsidiary Arrangements, and facility attachments.
  - (a) Under ordinary circumstances, classified information provided to the IAEA will be limited to information on nuclear material accounting (e.g., nuclear materials transactions, material balances, and inventory information) for facilities on the list of facilities eligible for application of safeguards under the VOA.
  - (b) When questions arise as to whether providing specific classified, export-controlled, or proprietary information is appropriate, the proposal for resolution will be coordinated with the Director of the Office of International Regimes and Agreements and the Associate Administrator for Defense Nuclear Security.
  - (c) Classified matter may not be given directly to an IAEA inspector or official. All classified matter must be subjected to classification and security review and transmitted by the Office of International Regimes and Agreements to the IAEA via diplomatic channels. Sensitive unclassified information will be transmitted to the IAEA in accordance with applicable regulations and procedures.
  - (d) Recipients of classified information or other sensitive information provided to the IAEA and its inspectors will be informed that the information is classified or protected by DOE and is to be protected by the IAEA using “safeguards confidential” or “safeguards highly confidential” designations, as appropriate.
- (24) Ensure that during inspections and complementary visits, IAEA inspectors and other personnel are hosted and escorted by trained DOE and/or contractor personnel who have been trained in applicable managed access provisions.

NOTE: Managed access provisions must be applied as needed to protect activities with national security significance; prevent dissemination of classified, proliferation sensitive information, and export-controlled information; meet safety or physical protection requirements; and protect business confidential, proprietary, or commercially sensitive information.

- (25) Ensure that escorts have appropriate background qualifications and clearances, training (including counterintelligence training), and are aware of applicable health, safety, and security procedures and procedures for inspecting IAEA equipment.
- (26) Ensure that IAEA inspectors and personnel carrying out functions under the VOA, Additional Protocol, and Subsidiary Arrangements are subject to the safety and radiation protection measures in effect at the facility, location, or site being inspected or visited, including emergency assistance, medical care in case of accidents, and all other health and safety protection that is provided to other visitors as required by U.S. laws and DOE directives or practices.
- (27) When unusual incidents or circumstances affect or involve loss of nuclear material subject to safeguards or the inadvertent loss or compromise of classified or sensitive information during an IAEA inspection, complementary access visit, or data transmission under the VOA or Additional Protocol inform the Director of the Office of International Regimes and Agreements, the Associate Administrator for Defense Nuclear Security, and the cognizant Deputy or Associate Administrator or cognizant PSO.
- (28) For any issue that may result in the need to terminate IAEA safeguards on DOE nuclear materials or at particular DOE facilities, sites, or locations, inform the Director of the Office of International Regimes and Agreements, the Associate Administrator for Defense Nuclear Security, and the cognizant Deputy or Associate Administrator or cognizant PSO.

NOTE: Notification must include information on the particular material or DOE facility, location, or site where safeguards are applied and the associated reasons for the need to terminate IAEA safeguards.

- (29) In conjunction with the responsible PSO or NNSA Deputy or Associate Administrator with applicable programmatic responsibility, provide funding and other resources to satisfy DOE's obligations under the VOA, Additional Protocol, Subsidiary Arrangements, and facility attachments, and specifically the costs of meeting IAEA obligations to the extent that activities under the responsibility of the field element are the basis for the obligations.

- (30) Upon initiation of a procurement request or at any time when it is known that a contract will fall within the scope of this Order, advise contracting officers that appropriate provisions and the CRD (Attachment 2) are to be included in contracts.
- (31) Refer to the Director of the Office of International Regimes and Agreements any questions, complaints, or requests related to IAEA inspections or complementary access visits.
- (32) Inform managers of affected DOE facilities, locations, or sites of their responsibilities and obligations as necessary for successful implementation of the VOA, Additional Protocol, and Subsidiary Arrangements.
- (33) Refer to the Director of the Office of International Regimes and Agreements questions relating to the application of 10 CFR Part 810 to DOE interactions with the IAEA.
- (34) Participate with the PSO or NNSA Deputy or Associate Administrator to ensure that planning for new DOE activities and facilities will take into account applicable requirements and responsibilities associated with IAEA safeguards.

6. DEFINITIONS. In addition to the listing below, terms defined in article 90 of the VOA and article 18 of the Additional Protocol also apply to this Order.

- a. Additional Protocol Declarations. Information provided to the IAEA in accordance with the Additional Protocol, articles 2 and 3.
- b. Complementary Access. IAEA inspectors' visits to facilities, locations, and sites in accordance with the provisions of the Additional Protocol. A complementary access visit is not the same as an inspection, which is defined in paragraph 6k.
- c. Design Information Questionnaire. An IAEA form used to provide to the IAEA information on facilities selected by the IAEA for the application of safeguards in accordance with the VOA. There are different forms for the various types of facilities.
- d. Effective Kilogram. A unit of measure applied to quantities of nuclear material defined under the Agreement as follows:
  - (1) for plutonium, its weight in kilograms;
  - (2) for uranium with an enrichment of 0.01 (1 percent) and above, its weight in kilograms multiplied by the square of its enrichment;
  - (3) for uranium with an enrichment below 0.01 (1 percent) and above 0.005 (0.5 percent), its weight in kilograms multiplied by 0.0001;

- (4) for depleted uranium with an enrichment of 0.005 (0.5 percent) or below;  
and
- (5) for thorium, its weight in kilograms multiplied by 0.00005.

For example, 10 kilograms of uranium with an enrichment of 0.03 (3 percent) would equal 0.009 effective kilograms (10 kilograms  $\times$  0.0009).

e. Export-Controlled Information. Certain unclassified Government information for which DOE is accountable and responsible and which requires a specific license or authorization to export. Export controlled information must be protected consistent with U.S. laws and regulations. Unrestricted dissemination of export-controlled information could reasonably be expected to have adverse effect on U.S. national security and nonproliferation objectives.

f. Facility.

- (1) A reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, isotope separation plant, or separate storage installation.
- (2) Any location where nuclear material in amounts greater than one effective kilogram is customarily used.

For purposes of the VOA and the Additional Protocol, the term applies to facilities that have been described in a design information questionnaire submitted to the IAEA. [Additional Protocol Article 18(i); VOA Article 90(i)]

g. Facility Attachment. That portion of the Subsidiary Arrangements that pertains to an installation. [Agreement, article 39(b)]

h. Field Element. A non-Headquarters DOE organization; area offices, support offices, operations offices, regional offices, site offices, or offices located at environmental restoration, construction, or termination sites.

i. Formerly Restricted Data. Classified information that the Department of Energy and the Department of Defense jointly determined to be related primarily to the military use of atomic weapons and removed by the Department of Energy from the category of Restricted Data under section 142(d) of the Atomic Energy Act of 1954 (as amended).

j. IAEA Steering Committee (ISC). An interagency group that coordinates IAEA-related policy for the United States. The ISC coordinates U.S. assistance in improving IAEA safeguards effectiveness and resolves interdepartmental issues relating to the VOA, Additional Protocol, or Subsidiary Arrangements. Members are representatives from the Departments of Defense, Energy, and State; the Office of Management and Budget; the NRC; and the National Security Council.

- k. Inspection. A formal visit by IAEA inspectors to verify U.S. declarations under the VOA. An inspection is not the same as a complementary access visit (defined in paragraph 6b, above).
- l. List of Facilities Eligible for Safeguards. A list, provided to the IAEA by the United States of facilities within the United States, containing source or special fissionable material that are not associated with activities with direct national security significance to the United States and, hence, eligible for application of safeguards under the VOA. [VOA, article 1(b)]
- m. Location. A site, facility, laboratory, center, building, room, area, or subpart thereof that is controlled by or operated for DOE.
- n. Location-Specific Environmental Sampling. The collection of environmental samples (e.g., air, water, vegetation, soil, and smears) collected at and in the immediate vicinity of a location specified by the IAEA for the purpose of drawing conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location. [Additional Protocol, Article 18(f)]
- o. National Security Information. Information pertaining to the national defense and foreign relations of the United States and classified in accordance with Executive Order 12958, as amended.
- p. Negotiating Team. Members of the Subgroup on IAEA Safeguards in the United States or their designees who form a group to negotiate with the IAEA to arrive at mutually-agreed-upon Subsidiary Arrangements and transitional Subsidiary Arrangements to the VOA and Additional Protocol and undertake other such responsibilities as may be designated by the IAEA Steering Committee or its Subcommittee on International Safeguards and Monitoring.
- q. Nuclear Materials Management and Safeguards System. The national database and information support system for nuclear materials controlled by the U.S. Government and created to support national safeguards and management objectives in the domestic and foreign use of nuclear resources. The system—
  - (1) stores data on nuclear material transactions and inventories and produces a wide range of printed reports for DOE, including NNSA, and NRC uses;
  - (2) satisfies the nuclear materials information obligations in agreements between the United States and foreign entities;
  - (3) provides the reporting interface between DOE facilities, locations, and sites selected for the application of safeguards under the provisions of the VOA and the Additional Protocol; and



- (4) serves as a centralized computer database that processes data received by way of unclassified and classified electronic links including the Secure Information Management and Exchange Network (SIMEX) used by a number of facilities, DOE elements and organizations, and NRC offices in the United States.
- r. Proprietary Information. Trade secrets developed at private expense outside of a cooperative research and development agreement and commercial or financial information defined as privileged or confidential under the Freedom of Information Act, Title 5 United States Code (U.S.C.) Part 552(b)(4), and which is marked as proprietary information.
- s. Restricted Data. As defined in the Atomic Energy Act of 1954, all information concerning—
  - (1) the design, manufacture, or use of atomic weapons;
  - (2) the production of special nuclear material; and
  - (3) the use of special nuclear material in the production of energy.

Restricted data does not include information that has been declassified or removed from the Restricted Data category as defined in section 142 of the Atomic Energy Act of 1954.
- t. Safeguards. Measures applied under the VOA and Additional Protocol to enable IAEA to detect diversion of nuclear material and undeclared nuclear activities.
- u. Safeguards Documents. Design information questionnaires; draft facility attachments; nuclear material transaction, material balance, and inventory reports; special reports; amplifications; and clarifications.
- v. Sensitive Nuclear Technology. Any information (including information incorporated in a production or utilization facility or important component part thereof) which is not available to the public and is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water; but does not include Restricted Data controlled pursuant to Chapter 12 of the Atomic Energy Act. The information may take a tangible form such as a model, prototype, blueprint, or operation manual or an intangible form such as technical services. (10 CFR 810)
- w. Site. That area delimited by the United States in the relevant design information for a facility, including a closed-down facility, and in the relevant information on a location outside facilities, including a closed-down location outside facilities (this is limited to locations with hot cells or where activities related to conversion,

enrichment, fuel fabrication or reprocessing were carried out); all installations, co-located with a facility or site, for the provision or use of essential services, including hot cells for processing irradiated materials not containing nuclear material; installations for the treatment, storage and disposal of waste; and buildings associated with specified items identified by the United States. [Additional Protocol, article 2a(iv)]

- x. Site Declaration. The set of all line items in an Additional Protocol declaration from a DOE or NNSA site under the purview of a field element.
- y. Source Material. In the context of this Order and IAEA programs—
  - (1) uranium containing the mixture of isotopes occurring in nature;
  - (2) uranium depleted in the isotope 235;
  - (3) thorium; and
  - (4) any of the foregoing in the form of metal, alloy, chemical compound, or concentrate.

Source material does not include ore or ore residue.

- z. Special Fissionable Material. Plutonium-239, uranium-233, uranium enriched in the isotopes 235 or 233, and any material containing one or more of the foregoing, but not including source material.
- aa. Special Nuclear Material. Plutonium, uranium-233, or uranium enriched above 0.711 percent by weight in the isotope uranium-235.
- bb. Subgroup on IAEA Safeguards in the United States (SISUS). A division of the ISC Subcommittee on International Safeguards and Monitoring (SISM), which monitors implementation of the VOA, Additional Protocol, and Subsidiary Arrangements; carries out responsibilities specifically prescribed in the VOA and Additional Protocol; and undertakes other working level activities as designated by the SISM or ISC.
- cc. Subsidiary Arrangements. Documents setting forth details that have been mutually agreed upon by the United States and the IAEA for implementing the VOA and Additional Protocol, as required by the Agreement (article 39). The Subsidiary Arrangements to the VOA include a general part applicable to those facilities in the United States identified by the IAEA for the application of safeguards in accordance with the VOA. The general part identifies the substance of communications between the United States and the IAEA, format of documents, procedures to be followed, and time limits for various actions. A separate facility attachment defines all other necessary arrangements specified

in sufficient detail to permit the IAEA to fulfill its responsibilities in an effective and efficient manner for each facility selected by the IAEA for the application of safeguards under the VOA.

- dd. Unclassified Controlled Nuclear Information. Certain unclassified Government information the unauthorized dissemination of which is prohibited under section 148 of the Atomic Energy Act of 1954 (as amended), and DOE O 471.1A, *Identification and Protection of Unclassified Controlled Nuclear Information*, dated 6-30-00.

## 7. REFERENCES.

- a. P.L. 83-703, Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq., online at [www.nrc.gov/who-we-are/governing-laws.html](http://www.nrc.gov/who-we-are/governing-laws.html)).
- b. U.S. Department of State, Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement, Federal Register, Vol. 63 (28), 7041-7044, February 11, 1998 (online at [www.gpoaccess.gov/fr/retrieve.html](http://www.gpoaccess.gov/fr/retrieve.html)).
- c. Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States, with Protocol. Done at Vienna November 18, 1977; entered into force December 9, 1980 (online at <http://dosfan.lib.uic.edu/acda/treaties/usiaea1.htm>).
- d. Subsidiary Arrangements to the Agreement Between the Government of the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, June 1, 1978.
- e. 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, International Atomic Energy Agency Board of Governors Document GOV/1998/25, May 14, 1998. Signed June 12, 1998 by the IAEA and the United States of America (online at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_documents&docid=f:td007.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_documents&docid=f:td007.107.pdf)).
- f. P.L. 109-401 United States and India Nuclear Cooperation Promotion Act 2006, Title II United States Additional Protocol Implementation passed December 8, 2006. (online at <http://thomas.loc.gov/>).
- g. DOE M 470.4-1, *Safeguards and Security Program Planning and Management*, dated 8-26-05.
- h. NNSA Policy Letter (NAP)-9A, *SECON Implementation*, dated 1-31-05.
- i. DOE O 142.3, *Unclassified Foreign Visits and Assignments Program*, dated 6-18-04. (DOE directives are available online at [www.directives.doe.gov](http://www.directives.doe.gov).)

- j. DOE O 475.1, *Counterintelligence Program*, dated 12-10-04.
  - k. DOE M 471.1-1, *Identification and Protection of Unclassified Controlled Nuclear Information Manual*, dated 10-23-01.
  - l. DOE M 470.4-4, *Information Security*, dated 8-26-06.
  - m. 10 CFR 810, "Assistance to Foreign Atomic Energy Activities."
  - n. 22 CFR 120-129, "International Traffic in Arms Regulations."
  - o. 15 CFR 730-774, "Commerce and Foreign Trade, Chapter VI—Bureau of Export Administration, Department of Commerce."
  - p. 10 CFR 110, "Export and Import of Nuclear Equipment and Materials."
  - q. P.L. 106-65, National Defense Authorization Act for Fiscal Year 2000, as amended.
  - r. Executive Order 12958, as amended, Classified National Security Information, (online at [www.archives.gov/federal\\_register/executive\\_orders/disposition\\_tables.html](http://www.archives.gov/federal_register/executive_orders/disposition_tables.html)).
8. NECESSITY FINDING STATEMENT. In compliance with the statutory requirements in P.L. 104-201, Sec. 3174, Orders relating to the execution of environmental restoration, waste management, or technology development activities at a defense nuclear facility under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq), may be imposed by the Secretary at the defense nuclear facility only if the Secretary finds that the Order is necessary for the protection of human health and the environment or safety, the fulfillment of current legal requirements, or the conduct of critical administrative functions.
9. CONTACT. Questions concerning this Order should be addressed to the Office of International Regimes and Agreements at (202) 586-8460.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL  
Deputy Secretary

**DOE ELEMENTS TO WHICH DOE O 142.2A IS APPLICABLE**

Office of the Secretary  
National Nuclear Security Administration  
Office of the Chief Financial Officer  
Office of the Chief Information Officer  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Environmental Management  
Office of General Counsel  
Office of Health, Safety and Security  
Office of Human Capital Management  
Office of Intelligence and Counterintelligence  
Office of Legacy Management  
Office of Management  
Office of Nuclear Energy, Science, and Technology  
Office of Policy and International Affairs  
Office of Science  
Secretary of Energy Advisory Board

**DOE ELEMENTS TO WHICH  
DOE O 142.2A IS *NOT* APPLICABLE**

Energy Information Administration  
Office of Economic Impact and Diversity  
Office of Electricity Delivery and Energy Reliability  
Office of Energy Efficiency and Renewable Energy  
Office of Fossil Energy  
Office of Hearings and Appeals  
Office of the Inspector General  
Office of Public Affairs  
Bonneville Power Administration  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration

## **CONTRACTOR REQUIREMENTS DOCUMENT**

### **DOE O 142.2A, *Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency***

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements. In doing so, the contractor must not flow down requirements to subcontractors unnecessarily or imprudently. That is, the contractor will ensure that it and its subcontractors comply with the requirements of this CRD and incur only those costs that would be incurred by a prudent person in the conduct of competitive business.

#### **1. GENERAL REQUIREMENTS.**

- a. This CRD establishes requirements for Department of Energy (DOE) contractors, including National Nuclear Security Administration (NNSA) contractors, whose contracts involve activities potentially subject to application of safeguards by the International Atomic Energy Agency (IAEA).
- b. In the performance of DOE contract obligations, each contractor must assist as directed in meeting DOE's obligations under [Note: for references see paragraph 7 of Order 142.2A]—
  - (1) the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States (Agreement),
  - (2) the Original Protocol to the Agreement (Original Protocol),
  - (3) the Additional Protocol to the Agreement (Additional Protocol),
  - (4) the Subsidiary Arrangements to the Agreement and Additional Protocol (Subsidiary Arrangements), and
  - (5) the Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement.

NOTE: The Agreement and Original Protocol, combined, will be referred to as the Voluntary Offer Agreement (VOA).

- c. DOE contractors do not have approval or denial authority for IAEA inspectors, inspections, or complementary access visits at DOE facilities, locations, or sites.

2. SPECIFIC REQUIREMENTS.

- a. Provide information and reports to the DOE field element as requested to assist in meeting DOE's obligations under the VOA, Additional Protocol, Subsidiary Arrangements, and Interagency Procedures.
- b. Carry out security reviews, prepare security plans, and conduct security assessments as requested by the field element.
- c. Upon notification of an upcoming IAEA inspection or complementary access visit, affected contractors must:
  - (1) prepare for the inspection or visit within required time constraints,
  - (2) keep readily available a file of current information for the identification of IAEA inspectors designated for inspections and complementary access visits in the United States, and
  - (3) maintain current arrangements for IAEA inspector's ready access and departure.
- d. Ensure that IAEA inspectors and personnel are identified properly before they enter a DOE facility, location, or site.
- e. Ensure that IAEA inspectors are informed of health, safety, and security requirements applicable to the DOE facility, location, or site to be inspected or visited.
- f. Ensure that hosts and escorts assigned to IAEA inspectors for inspections and complementary access visits are trained appropriately and are aware of applicable access procedures and managed access provisions.
  - (1) Apply managed access provisions where needed to protect activities of national security significance; prevent dissemination of proliferation sensitive information; meet safety or physical protection requirements; and protect business confidential, proprietary, or commercially sensitive information.
  - (2) Ensure that escorts have appropriate background qualifications and clearances and are knowledgeable of health, safety, and security procedures applicable to the DOE facilities, locations, and sites to be inspected or visited.
  - (3) Ensure that hosts and escorts are aware of DOE procedures for inspection of IAEA equipment before an inspection or complementary access visit begins.

- g. As directed by the responsible DOE field element, provide IAEA inspectors access to DOE facilities that the IAEA has selected for inspection under the VOA or to DOE activities and associated locations that are available for complementary access under article 5 of the Additional Protocol.
- h. Ensure that IAEA inspectors are free to carry out inspections and visits at the facility, location, or site as authorized and in compliance with any restrictions defined in the VOA, Additional Protocol, Subsidiary Arrangements, applicable facility attachment, and procedures established by the head of the responsible DOE field element.
- i. Exercise care to ensure that classified information provided to IAEA inspectors is limited to information defined under the terms of the VOA, Additional Protocol, Subsidiary Arrangements, and facility attachments.
  - (1) Under ordinary circumstances, classified information provided to the IAEA is to be limited to information on nuclear material accounting, nuclear materials transactions, material balances, and inventory for DOE facilities on the list of those eligible for application of safeguards under the VOA.
    - (a) Classified matter may not be given directly to an IAEA inspector or official. All classified matter must be subjected to classification and security review and transmitted by the Office of International Regimes and Agreements to the IAEA via diplomatic channels. Sensitive unclassified information will be transmitted to the IAEA in accordance with applicable regulations and procedures.
    - (b) Recipients of classified information or other sensitive information provided to the IAEA and its inspectors will be informed that the information is classified or protected by DOE and is to be protected by the IAEA using “safeguards confidential” or “safeguards highly confidential” designations, as appropriate.
  - (2) The following limits apply to classified information.
    - (a) Restricted Data or Formerly Restricted Data must not be revealed, released, or transmitted to the IAEA.
    - (b) Unclassified Controlled Nuclear Information must not be revealed, released, or transmitted to the IAEA except as authorized in DOE M 471.1-1, Identification and Protection of Unclassified Controlled Nuclear Information Manual, dated 10-23-01.
    - (c) Sensitive nuclear technology must not be revealed, released, or transmitted to the IAEA except as authorized under 10 CFR 810.



- (d) Export controlled information and information controlled under the Department of State's (State's) International Traffic in Arms Regulations (ITAR) and the Department of Commerce's (Commerce's) Export Administration Regulations (EAR), the Nuclear Regulatory Commission's Export and Import of Nuclear Equipment and Materials Regulations, and the Department of Energy's regulations on Assistance to Foreign Atomic Energy Activities (Part 810) must not be revealed or released except as authorized under the relevant regulations. (22 CFR 120-129, "International Traffic in Arms Regulations," and 15 CFR 730-774, "Export Administration Regulations"; 10 CFR 110, "Export and Import of Nuclear Equipment and Materials"; 10 CFR 810, "Assistance to Foreign Atomic Energy Activities.")
  - (e) Information deemed to be "Confidential Foreign Government Information—Modified Handling Required" must be protected as mandated by DOE directives and must not be revealed, released or transmitted to the IAEA without the express approval of the foreign government (DOE M 471.2-1C, Classified Matter Protection and Control Manual, dated 7-14-04).
- (3) When questions arise on the appropriateness of providing classified, export-controlled, proprietary, or other specific information, to the IAEA, resolution will be coordinated with the DOE field element.
- (4) When classified information provided to an IAEA inspector is to be protected under the IAEA "safeguards confidential" designation, the inspector is to be informed that the information is classified by DOE.
- j. Ensure that IAEA inspectors and other personnel have the benefit of safety and radiation protection measures in effect at each DOE facility, location, or site that is visited or inspected including emergency assistance, medical care in case of accidents, and all other health and safety protection required for other visitors to DOE facilities, locations, or sites under U.S. laws or DOE directives or practices.
- k. Inform the DOE field element of unusual incidents or circumstances involving the loss of nuclear material that is subject to safeguards under the VOA, the inadvertent loss or compromise of classified or sensitive information occurring during an IAEA inspection or complementary access visit, or data transmission that is not authorized under the VOA or Additional Protocol.
- l. Direct questions, complaints, and requests related to IAEA inspections or complementary access visits to the DOE field element.
- m. Notify the DOE field element when negotiations or plans are initiated that could lead to a DOE facility, location, or site being judged to be engaged in activities with direct national security significance to the United States and therefore

requiring deletion from the list of DOE facilities eligible for the application of safeguards under the VOA or the list of DOE activities and associated locations previously declared under the Additional Protocol. Consider whether application of managed access can acceptably mitigate risks of disclosing activities with direct national security significance.

- n. Notify the DOE field element when a DOE facility, location, or site excluded from IAEA inspection because of associated activities with direct national security significance to the United States can be considered for addition to the list of DOE facilities eligible for application of safeguards under the VOA or the list of DOE activities and associated locations declared under the Additional Protocol because of the termination of activities with direct national security significance or because the application of managed access can acceptably mitigate risks of disclosing activities with direct national security significance.
- o. Notify the DOE field element when activities that are potentially reportable to the IAEA under the required declaration are planned or initiated. (Additional Protocol, article 2)
- p. Designate a point of contact for matters relating to IAEA inspections and complementary access visits and keep the DOE field element informed of the person's name and current contact information. Participate, as requested by the DOE field element, on the team assigned to cover.