



U.S.-IAEA Safeguards Agreement: Article-by-Article Analysis of the Additional Protocol

April 30, 2002

[Go to: [Text of Article-by-Article](#)]

To The President:

I have the honor to submit to you 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, with annexes (the "Additional Protocol"). I recommend that the Additional Protocol be transmitted to the Senate for advice and consent to ratification. Also enclosed, for the information of the Senate, are a letter the United States has sent to the International Atomic Energy Agency (the "Agency") concerning the Additional Protocol; a Subsidiary Arrangement to the Additional Protocol, which specifies particular, but not all, measures that the United States intends to use to protect information of direct national security significance to the United States and to manage access under the Additional Protocol; and an article-by-article analysis of the Additional Protocol, including its annexes. The recommended legislation necessary to implement the Additional Protocol will be submitted separately to the Congress.

The Additional Protocol was approved by the Board of Governors of the Agency on June 11, 1998, signed by the United States and the Agency on June 12, 1998, and will enter into force when the United States notifies the Agency that the U.S. statutory and constitutional requirements for entry into force have been met. The Administration intends to put in place the necessary regulatory and implementation framework before entry into force.

This Additional Protocol is a bilateral treaty that supplements and amends the Agency verification arrangements set forth in the existing Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America of November 18, 1977 (the "Voluntary Offer"), which entered into force on December 9, 1980. Specifically, this Additional Protocol expands the types of nuclear and nuclear-related locations and activities the United States will declare and, by permitting access to these locations and activities in certain circumstances, expands the Agency's access rights. As is the case with the Voluntary Offer, the Additional Protocol permits the United States to exclude its application in instances where its application would result in access by the Agency to activities with direct national security significance to the United States or to locations or information associated with such activities (the "National Security Exclusion"). Consistent with the President's authority, the decision by a Federal Agency to use the National Security Exclusion will be guided by principles developed for its application. The United States intends to provide information and access to the Agency in accordance with the terms of the Additional Protocol in order to assist it in developing the procedures, tools, and techniques that will strengthen the capability of the Agency to detect undeclared nuclear activities in non-nuclear-weapon states. The Additional Protocol contains no arms control or disarmament undertakings.

The Treaty on the Non-Proliferation of Nuclear Weapons (the "NPT") requires non-nuclear-weapon states parties to accept Agency safeguards on all nuclear material in all of their peaceful nuclear activities. The United States, as a nuclear-weapon state party to the NPT, is under no legal obligation to accept such safeguards. However, beginning with President Johnson's 1967 pledge, it has been the announced policy of the United States to permit the application of Agency safeguards to all of its nuclear facilities, except only those excluded for national security reasons. By submitting itself to the same safeguards on all of its civil nuclear facilities that non-nuclear-weapon states parties are subject to, the United States intended to demonstrate that adherence to the NPT did not place other countries at a commercial disadvantage, either because of increased costs associated with safeguards or because of the risk of the compromise of proprietary information. This offer was critical to gaining the acceptance of the NPT by countries such as Germany and Japan.

At the end of the Persian Gulf War, the world learned about the extent of Iraq's clandestine pursuit of an advanced program to develop nuclear weapons. The international community recognized that the Agency's international inspection system needed to be strengthened in order to increase its capability to detect secret nuclear programs. After 4 years of work by the Secretariat of the Agency, an Agency committee agreed on a Model Additional Protocol (the "Model Protocol") for strengthening nuclear safeguards. The Model Protocol was approved by the Agency's Board of Governors in 1997. The Model Protocol was designed to be used to amend existing safeguards agreements to strengthen such safeguards by requiring non-nuclear-weapon states to provide, inter alia, broader declarations to the Agency about their nuclear programs and nuclear-related activities, and by expanding the access rights of the Agency. The new safeguards measures become effective in each state when it brings its protocol into force.

During the negotiations of the Model Protocol, many non-nuclear-weapon states parties to the NPT urged the United States, as the strongest proponent, to accept on a voluntary basis the provisions of the Model Protocol. Following the example of the Voluntary Offer, the United States stated during the negotiations that it would accept the provisions of the Model Protocol, subject to a National Security Exclusion. The United States took a leading role in the negotiation of the Model Protocol, and the success in achieving a strong Model Protocol was critically dependent on voluntary acceptance of Model Protocol measures by the United States. The U.S. signature of the Additional Protocol was a significant factor in the early decision by many non-nuclear-weapon states to accept the Protocol. By the end of March of this year, 61 states had signed additional protocols with the Agency based on the Model Protocol.

The Model Protocol requires states to report a range of information to the Agency about their nuclear and nuclear-related activities and about the planned developments in their nuclear fuel cycles. This includes expanded information about their holdings of uranium and thorium ores and ore concentrates and of other plutonium and uranium materials not currently subject to Agency safeguards, general information about their manufacturing of equipment for enriching uranium or producing plutonium, general information about their nuclear fuel cycle-related research and development activities not involving nuclear material, and their import and export of nuclear material and equipment.

Such broad-based information makes it substantially more difficult for a state planning a nuclear-weapon program to conceal the early stages of that program and provides the Agency with a critical reference base for comparison with information otherwise available to it, including information from other states. The Model Protocol also provides the Agency with certain rights of access to declared locations as well as to other locations to investigate the possibility of undeclared activities. This increased risk of early detection is intended to deter non-nuclear-weapon states that might, in the future, be tempted to undertake a clandestine nuclear weapon program. With increased transparency of non-nuclear-weapon states' nuclear programs, the Agency should be able to provide greater assurance of both the absence of diversion of declared nuclear material and the absence of undeclared nuclear material and activities in non-nuclear-weapon states.

Minimizing the burden of safeguards on inspected locations is a long-standing concern of the Agency and its member states and is reflected in a number of provisions of existing safeguards agreements, including the Voluntary Offer, and in the Model Protocol. Existing Agency safeguards agreements specify that safeguards shall be implemented in a manner designed to avoid hampering economic and technological development and to avoid undue interference in peaceful nuclear activities, that the Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge, and that the Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities. These provisions of existing safeguards agreements remain in force and are expanded by the Model Protocol.

The overall design of the Model Protocol was shaped by the interest of states in establishing an appropriate balance between improving the effectiveness of the safeguards system and the need to avoid undue interference with legitimate nuclear or nuclear-related activities. The declaration requirements of the Model Protocol are of a general character. The Agency is precluded from mechanically or systematically verifying the declarations. The Model Protocol defines the activities the Agency may carry out at locations of different types; provides for managed access to protect various classes of sensitive information; and provides for the negotiation of subsidiary arrangements as needed to further define how Protocol measures shall be applied, including at particular locations. The Model Protocol requires the Agency to maintain a stringent regime to ensure effective protection against disclosure of confidential information.

The Department of State, the former Arms Control and Disarmament Agency, the Department of Defense, the Department of Energy, and the Nuclear Regulatory Commission, with the advice and support of the Central Intelligence Agency, were primarily responsible for the negotiation of the Additional Protocol. The responsibility for preparing for its entry into force has been undertaken by an interagency group led by the National Security Council staff and comprised of representatives of the Department of State, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Energy, the Nuclear Regulatory Commission, and the Central Intelligence Agency. Based on the deliberations of this interagency group, the Department of State, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Energy, and the Nuclear Regulatory Commission, with the advice and support of the Central Intelligence Agency, support the transmittal of the Additional Protocol to the Senate for advice and consent to ratification.

Acceptance of the Additional Protocol will sustain the longstanding U.S. record of voluntary acceptance of nuclear safeguards and greatly strengthen the U.S. ability to promote universal adoption of the Model Protocol, a central goal of U.S. nuclear nonproliferation policy. Widespread acceptance of the Model Protocol will contribute significantly to U.S. nonproliferation objectives, as well as strengthen U.S. and international security. I therefore recommend that you submit the Additional Protocol to the Senate for its advice and consent to ratification at the earliest possible date.

Respectfully submitted,

Secretary Colin L. Powell

May 9, 2002

Message to the Senate of the United States

TO THE SENATE OF THE UNITED STATES:

I submit herewith, for Senate advice and consent to ratification, 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, with annexes, signed at Vienna June 12, 1998 (the "Additional Protocol"). Adhering to the Additional Protocol will bolster U.S. efforts to strengthen nuclear safeguards and promote the nonproliferation of nuclear weapons, which is a cornerstone of U.S. foreign and national security policy.

At the end of the Persian Gulf War, the world learned the extent of Iraq's clandestine pursuit of an advanced program to develop nuclear weapons. In order to increase the capability of the International Atomic Energy Agency (the "Agency") to detect such programs, the international community negotiated a Model Additional Protocol (the "Model Protocol") to strengthen the Agency's nuclear safeguards system. The Model Protocol is to be used to amend the existing bilateral safeguards agreements of states with the Agency.

The Model Protocol is a milestone in U.S. efforts to strengthen the safeguards system of the Agency and thereby to reduce the threat posed by clandestine efforts to develop a nuclear weapon capability. By accepting the Model Protocol, states assume new obligations that will provide far greater transparency for their nuclear activities. Specifically, the Model Protocol strengthens safeguards by requiring states to provide broader declarations to the Agency about their nuclear programs and nuclear-related activities and by expanding the access rights of the Agency.

The United States signed the Additional Protocol at Vienna on June 12, 1998. The Additional Protocol is a bilateral treaty that would supplement and amend the Agency verification arrangements under the existing Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America of November 18, 1977 (the "Voluntary Offer"), which entered into force on December 9, 1980. The Additional Protocol will enter into force when the United States notifies the Agency that the U.S. statutory and constitutional requirements for entry into force have been met.

The Treaty on the Non-Proliferation of Nuclear Weapons (the "NPT") requires non-nuclear-weapon states parties to accept Agency safeguards on their nuclear activities. The United States, as a nuclear-weapon state party to the NPT, is not obligated to accept Agency safeguards on its nuclear activities. Nonetheless, it has been the announced policy of the United States since 1967 to permit the application of Agency safeguards to its nuclear facilities -- excluding only those of direct national security significance. The Additional Protocol similarly allows the United States to exclude its application in instances where the United States decides that its application would result in access by the Agency to activities with direct national security significance to the United States or access to locations or information associated with such activities. I am, therefore, confident that the Additional Protocol, given our right to invoke the national security exclusion and to manage access in accordance with established principles for implementing these provisions, can be implemented in a fashion that is fully consistent with U.S. national security.

By submitting itself to the same safeguards on all of its civil nuclear activities that non-nuclear-weapon states parties to the NPT are subject to, the United States intends to demonstrate that adherence to the Model Protocol does not place other countries at a commercial disadvantage. The U.S. signature of the Additional Protocol was an important factor in the decisions of many non-nuclear-weapon states to accept the Model Protocol and provided significant impetus toward their early acceptance. I am satisfied that the provisions of the Additional Protocol, given our right to manage access in accordance with Article 7 and established implementation principles, will allow the United States to prevent the dissemination of proliferation-sensitive information and protect proprietary or commercially sensitive information.

I also transmit, for the information of the Senate, the report of the Department of State concerning the Additional Protocol, including an article-by-article analysis, a subsidiary arrangement, and a letter the United States has sent to the Agency concerning the Additional Protocol. Additionally, the recommended legislation necessary to implement the Additional Protocol will be submitted separately to the Congress.

I believe that the Additional Protocol is in the best interests of the United States. Our acceptance of this agreement will sustain our longstanding record of voluntary acceptance of nuclear safeguards and greatly strengthen our ability to promote universal adoption of the Model Protocol, a central goal of my nuclear nonproliferation policy. Widespread acceptance of the Protocol will contribute significantly to our nonproliferation objectives as well as strengthen U.S., allied, and international security. I, therefore, urge the Senate to give early and favorable consideration to the Additional Protocol, and to give advice and consent to its ratification.

GEORGE W. BUSH
THE WHITE HOUSE,
May 9, 2002.

Article-by-Article Analysis of the Additional Protocol

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 (the "Additional Protocol") consists of the main text of the Protocol along with two annexes, which are an integral part of the Additional Protocol. It is based on the Model Additional Protocol, with certain additions, most notably the provision that allows the United States to exclude application of the Additional Protocol in cases where the United States decides it would result in access by the International Atomic Energy Agency (the "Agency") to activities with direct national security significance to the United States or to locations or information associated with such activities. This provision is referred to herein as the "National Security Exclusion." Executive Branch agencies will exercise their responsibilities to implement the Additional Protocol subject in all respects to the President's authority as chief executive and consistent with his foreign affairs power.

Title and Preamble

The Title of the Additional Protocol is 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." The Additional Protocol is a bilateral treaty that will supplement and amend the Agency verification arrangements set forth in the existing Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (the "Voluntary Offer"), which was signed at Vienna on November 18, 1977, and entered into force on December 9, 1980.

The Preamble to the Additional Protocol serves as an introduction and sets forth the intention of the United States and the Agency in broad terms. The first paragraph of the Preamble notes that the United States and the Agency are already parties to the Voluntary Offer. The following paragraphs of the preamble set forth the Parties' considerations upon entering into the Additional Protocol. These paragraphs first recognize the desire of the international community to further enhance nuclear non-proliferation by strengthening the Agency's safeguards system. They also reiterate certain provisions in the Voluntary Offer, *inter alia*, that the Agency must, in the implementation of safeguards, take into account the need to avoid hampering the economic and technological development of the United States or international cooperation in the field of peaceful nuclear activities; respect health, safety, physical protection and other security provisions in force and the rights of individuals; and take every precaution to protect commercial, technological, and industrial secrets as well as other confidential information. Furthermore, they note that, consistent with the objective to strengthen the effectiveness and improve the efficiency of safeguards, the frequency and intensity of activities described in the Additional Protocol will be kept to a minimum.

Article 1 -- Relationship Between the Additional Protocol and the Voluntary Offer, U.S. National Security Exclusion, and Managed Access

Article 1.a establishes the relationship between the Voluntary Offer and the Additional Protocol. It provides that the provisions of the Voluntary Offer will apply to the Additional Protocol to the extent relevant to and compatible with the provisions of the Additional Protocol. Where there is a conflict between the two agreements, the provisions of the Additional Protocol are to apply. The principal differences between the Voluntary Offer and the Additional Protocol include the broader declaration requirements called for and the expanded access permitted in the Additional Protocol. There are also improved procedures for designating Agency inspectors, issuing their visas, and protecting safeguards information by the Agency. These procedures are discussed below in the sections describing Articles 11, 12, and 15. In such areas, the Additional Protocol provisions will govern. As a practical matter, the United States has been implementing procedures similar to those in the Additional Protocol for designating inspectors and issuing their visas on a voluntary basis for several years.

Under Article 1.b of the Additional Protocol, the United States has the right to exclude the application of the Additional Protocol where the United States decides that its application would result in access by the Agency to activities with direct national security significance to the United States or to locations or information associated with such activities. The United States has the sole discretion to determine whether an activity implicates information of direct national security significance and therefore whether and how to invoke the National Security Exclusion. The United States will have undeclared nuclear material and activities outside the scope of the Additional Protocol and the Voluntary Offer, including certain activities at locations that are part of the U.S. civil nuclear program, consistent with its status as a nuclear-weapon state. The Agency knows and accepts that this will be the case.

In addition, under Article 1.c, the United States has the right to use managed access in connection with activities with direct national security significance to the United States or in connection with locations or information associated with such activities. This right is not available to non-nuclear-weapon states. Consistent with the President's authority, use of the National Security Exclusion will be guided by principles developed for its application.

Information of direct national security significance will be protected in all aspects of implementation of the Additional Protocol through invoking the National Security Exclusion or through the implementation of managed access. The National Security Exclusion is applicable to each of the following provisions and will exempt the United States from the requirements noted when it is invoked.

The United States will make full use of the managed access and National Security Exclusion provisions of Article 1 in order to protect activities of direct national security significance to the United States or locations or information associated with such activities. Additionally, decisions concerning the use of the National Security Exclusion and managed access to protect national security information will be made in accordance with established implementing procedures solely by the affected cognizant Department or Agency.

Article 2 -- Provision of Information

Article 2 sets forth information that the United States is to provide to the Agency. The United States must provide the following declarations specified in

Article 2.a: information regarding nuclear fuel cycle-related research and development activities not involving nuclear material that are funded, specifically authorized or controlled by, or carried out on behalf of, the United States (Article 2.a(i)); if agreed by the United States, additional information needed to improve the effectiveness or efficiency of safeguards on nuclear material at nuclear facilities and locations outside facilities (Article 2.a(ii)); a general description of each building on a site (i.e., the area delimited by the United States in the relevant design information for a facility) (Articles 2.a(iii) and 18.b); a description of the scale of operations of each location engaged in the manufacturing activities specified in Annex I (Article 2.a(iv)); information regarding uranium mines and concentration plants and thorium concentration plants (Article 2.a(v)); information regarding locations with certain quantities of specified nuclear materials as well as information regarding exports and imports of certain quantities of these materials (Article 2.a(vi)); information regarding nuclear material declared by the United States but exempted from safeguards by arrangement with the Agency (Article 2.a(vii)); information regarding the location or further processing of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233 on which safeguards have been terminated pursuant to Article 11 of the Voluntary Offer (Article 2.a(viii)); information regarding the equipment and non-nuclear material specified in Annex II with regard to exports and imports of such items (Article 2.a(ix)); and information regarding general plans for the succeeding 10-year period relevant to the development of the nuclear fuel cycle when approved by the appropriate authorities in the United States (Article 2.a(x)).

Article 2.b requires the United States to make every reasonable effort to provide: information regarding specified nuclear fuel cycle-related research and development activities not involving nuclear material that are not funded, specifically authorized or controlled by, or carried out on behalf of, the United States (Article 2.b(i)); and a general description of activities and the identity of the person or entity carrying out activities at locations identified by the Agency outside a site (i.e., the area delimited by the United States in the relevant design information for a facility) that the Agency considers might be functionally related to the activities of that site (Articles 2.b(ii) and 18.b).

Article 2.c requires the United States, if requested by the Agency, to provide amplifications or clarifications of any information provided under Article 2, in so far as relevant for the purpose of safeguards. The United States has informed the Agency that it expects that a "question relating to the correctness and completeness of the information provided pursuant to Article 2," (Article 4.a.(ii)) or an "inconsistency relating to that information" (Article 4.a.(iii)) will be judged by the Agency strictly within the context of whether the information provided with respect to civil nuclear activities is complete, correct, and internally consistent. In accordance with the National Security Exclusion, the United States will supply information pursuant to Article 2 of the Additional Protocol only on those unclassified activities to which it has determined that it will be able to provide the Agency with sufficient access, including with managed access, to enable it to verify the accuracy of the declared information.

Article 3 -- Timelines for the Provision of Information

Article 3 sets forth the timelines for submission of the U.S. declarations. The United States must provide to the Agency the information identified in Article 2.a(i), (iii), (iv), (v), (vi)(a), (vii) and (x) and Article 2.b(i) within 180 days of the entry into force of the Additional Protocol. Other information is to be submitted on a quarterly or annual basis, within a specified period from a particular event, or as negotiated on a case-by-case basis.

Articles 4-6 -- Complementary Access

Article 4 establishes the rights and obligations of the Agency with regard to the implementation of complementary access. Specifically, Article 4.a provides that the Agency shall not mechanically or systematically seek to verify the information in the Article 2 declarations and then sets forth the purposes for which the Agency can exercise complementary access. Article 4.a(i) specifies that the Agency shall have access to the locations referred to in Article 5.a(i) or (ii) on a selective basis in order to assure the absence of undeclared nuclear material and activities. Under Article 4.a(ii), the Agency shall have access to the locations specified in Articles 5.b or 5.c for the purpose of resolving a question relating to the correctness and completeness of the information provided or resolving an inconsistency relating to that information. Article 4.a(iii) allows the Agency to have access to any of the decommissioned locations referred to in Article 5.a(iii) to the extent necessary to confirm the U.S. declaration. The United States has informed the Agency that it expects the Agency to seek such access in the United States for the purpose of increasing the effectiveness or efficiency of IAEA safeguards at facilities in non-nuclear-weapon states or enhancing the capability of the Agency to detect undeclared nuclear material and activities in a non-nuclear-weapon state. Further, the United States has informed the Agency that, as a nuclear-weapon state, the United States foresees no circumstances in which the Agency would need to request access in the United States pursuant to Article 4.d of the Additional Protocol without first providing the United States with the opportunity to clarify and facilitate the resolution of the question or inconsistency.

Under Article 4.b, the Agency is generally required to give advance notice of access of at least 24 hours. However, for access to any place on a site (defined in Article 18.b as the area delimited by the United States in the relevant design information for a facility) that is sought in conjunction with design information verification visits or ad hoc or routine inspections on that site, the period of advance notice shall, if the Agency so requests, be at least two hours, but in exceptional circumstances may be less than two hours. Under Article 4.c, the advance notice shall be in writing and specify the reasons for access and the activities to be carried out. Article 4.d states that, in the case of a question or inconsistency, the Agency shall provide the United States with an opportunity to clarify and facilitate the resolution of the question or inconsistency. The Additional Protocol states that such an opportunity is to be provided before a request for access, unless the Agency considers that delay in access would prejudice the purpose for which the access is sought. The Agency is not to draw any conclusions about the question or inconsistency until the United States has been provided with such an opportunity. As noted above the United States has informed the Agency that as a nuclear-weapon state, the United States foresees no circumstances in which the Agency would need to request access pursuant to Article 4.d of the Additional Protocol without first providing the United States with the opportunity to clarify and facilitate the resolution of the question or inconsistency. Pursuant to Article 4.e, unless otherwise agreed to by the United States, access shall only take place during regular working hours. Article 4.f specifically authorizes U.S. representatives to accompany Agency inspectors during their access, provided that the inspectors are not thereby delayed or otherwise impeded in the exercise of their functions. However, the managed access provisions of Article 1 and Article 7 or the National Security Exclusion could be invoked and, if invoked, could preclude or otherwise affect IAEA access or activities.

Article 5 sets forth the locations to which the Agency may have access. Specifically, Article 5.a defines the locations for which the United States must provide access subject to the managed access provision of Article 1 and the National Security Exclusion or the managed access provisions of Article 7. These are: any place on a site (i.e., the area delimited by the United States in the relevant design information for a facility) (Article 5.a(i)); any location identified by the United States in its declarations under Article 2.a(v)-(viii) (Article 5.a(ii)); and any decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used (Article 5.a(iii)).

Articles 5.b and 5.c list other locations for which the United States shall provide access or, if it is unable to do so, "shall make every reasonable effort" to satisfy Agency requirements, without delay, through other means. The locations in Article 5.b are the locations (other than those referred to in Article 5.a (i)) described in the declarations made under the following provisions: Article 2.a(i) (locations of nuclear fuel cycle-related research and development funded, authorized or controlled by, or carried out on behalf of the United States); Article 2.a(iv) (locations engaged in activities listed in Annex I); Article 2.a(ix)(b) (locations of intended use in the United States of imported Annex II equipment and non-nuclear material) and Article 2.b (specified nuclear fuel cycle-related research and development that is not funded, authorized or controlled by, or carried out on behalf of, the United States and locations outside a site). Article 5.c provides for access to any location specified by the Agency, other than locations referred to in Article 5.a or 5.b, to carry out location-specific environmental sampling.

Under the National Security Exclusion, the United States has the right to exclude from the Article 2 declarations locations that it determines would result in Agency access to activities with direct national security significance or to locations or information associated with such activities. Access under Articles 5.a(i), 5.a(ii) and 5.a(iii) and 5.b is limited to those locations identified by the United States in its declarations under Article 2. The Agency could seek access to other locations (Article 5.c), but the United States will invoke the National Security Exclusion and deny access if it determines that such access would result in access by the Agency to activities with direct national security significance or to locations or information associated with such activities.

Article 6 sets forth the range of activities that may be employed by Agency inspectors during complementary access. Under Article 6, the type of activities that can be conducted by the inspectors depends on the particular location under inspection. The United States intends to exercise its right under the National Security Exclusion and managed access provisions of Article 1 to preclude the use of particular measures if their use would result in access by the Agency to activities with direct national security significance to the United States or to locations or information associated with such activities. For example, the United States will use the National Security Exclusion to preclude the Agency from collecting location specific environmental samples from current or former nuclear weapon production complex sites. In addition, the complementary access activities referred to in Articles 5 and 6 are subject to the managed access provisions contained in Article 7.

Article 7 -- Managed Access

Article 7 provides that, upon request by the United States, the Agency and the United States shall make arrangements for managed access under the Additional Protocol in order to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, or to protect proprietary or commercially sensitive information. Under Article 7.b, the United States may, when providing the information referred to in Article 2, inform the Agency of the places at a site or location at which managed access may be applicable, although it is not obligated to do so. Article 7.c allows the United States to use managed access pending entry into force of any necessary Subsidiary Arrangements. Specific managed access measures needed to protect the types of information set forth in Article 7 will be determined on a case-by-case basis and will depend on, among other factors, the details of the particular location, and the inspection activities that are requested by the Agency. As noted previously, the United States intends to deny access or the application of specific measures on the basis of the National Security Exclusion. Where the United States decides to permit access, Article 1.c also allows the United States to use managed access to protect activities, information, or locations of direct national security significance. This gives the United States the discretion to use managed access, rather than exclusion, to protect activities, information, or locations of direct national security significance. Such circumstances may arise, for example, where unclassified, civil nuclear activities are being conducted at installations where national security activities are also being conducted and it has been determined that managed access procedures can be implemented to allow Agency access to the unclassified activities while fully protecting classified information.

When the Additional Protocol was concluded, a Subsidiary Arrangement was agreed to between the United States and the Agency specifying, for the purposes of the Additional Protocol with the United States, as a nuclear-weapon state, measures that could be taken to manage access. These may include, inter alia: (a) removal of sensitive papers from office spaces; (b) shrouding of sensitive displays, stores, and equipment; (c) shrouding of sensitive pieces of equipment, such as computers or electronic systems; (d) logging off of computer systems and turning off data indicating devices; (e) restriction of safeguards instrumentation or environmental sampling to the purpose of the access; and (f) in exceptional cases, giving only individual inspectors access to certain parts of the inspection location. This Subsidiary Arrangement is to enter into force when the Additional Protocol enters into force.

Article 8 -- Additional Access at U.S. Request

Article 8 allows the United States to offer the Agency access to locations in addition to those referred to in Articles 5 and 9 and to request that the Agency conduct verification activities at a particular location. The Agency shall, without delay, make every reasonable effort to act upon such a request.

Article 9 -- Environmental Sampling

Under Article 9, the United States shall provide the Agency with access to locations specified by the Agency to carry out wide-area environmental sampling, provided that if the United States is unable to provide such access, it shall make every reasonable effort to satisfy Agency requirements at alternative locations. Article 9 further provides that the Agency shall not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefor have been approved by the Agency's Board of Governors (the "Board") and following consultations between the Agency and the United States. Such arrangements have not been brought before or approved by the Board. The United States has informed the Agency that even if such arrangements were approved, the United States does not foresee circumstances in which the Agency would need to propose to conduct wide area environmental sampling.

Article 10 -- Requirements for IAEA Reports to the United States

Article 10 requires the Agency to inform the United States, within specified time limits, of activities carried out under the Additional Protocol, the results of activities in respect of any questions or inconsistencies the Agency had brought to the attention of the United States, and the conclusions it has drawn from its activities under the Additional Protocol.

Article 11 -- Designation of Agency Inspectors

Article 11 provides improved procedures for the designation of Agency inspectors. Under Article 11, the Director General shall notify the United States of the Board's approval of any Agency official as a safeguards inspector. Unless the United States advises the Director General of its rejection of such an official as an inspector within three months of receipt of notification of the Board's approval, the inspector will be considered designated to the United States. Under the terms of the Voluntary Offer, the United States also retains the right subsequently to withdraw acceptance of inspectors as needed.

Article 12 -- Visas

To enable inspectors to carry out their duties in the United States, Article 12 requires the United States to issue appropriate multiple-entry/exit and/or transit visas to designated Agency inspectors. These visas must be valid for at least one year, must be issued within one month of a request, and must be renewed, as required, to cover the duration of the inspector's designation to the United States.

Article 13 -- Subsidiary Arrangements

Article 13 provides for the conclusion of Subsidiary Arrangements that specify how Additional Protocol measures are to be applied. Requests for such arrangements can be made at any time by either the United States or the Agency. Subsidiary Arrangements are likely to regard matters such as managed access and Agency communications. The United States and the Agency shall agree on such arrangements within 90 days of the entry into force of the Additional Protocol or, where the indication of the need for such Subsidiary Arrangements is made after the entry into force of the Additional

Protocol, within 90 days of date of such indication. As discussed in Article 7, the United States and the Agency have agreed to a Subsidiary Arrangement governing certain measures regarding managed access. This Arrangement is to enter into force upon entry into force of the Additional Protocol.

Article 14 -- Agency Communication Systems

Under Article 14, the United States is required to permit and protect unimpeded communications by the Agency for official purposes between Agency inspectors in the United States and Agency Headquarters and/or Regional Offices. The Agency has the right, in consultation with the United States, to make use of internationally established systems of direct communications, including satellite systems and other forms of telecommunication. Agency communications shall take due account of the need to protect proprietary or commercially sensitive information or design information that the United States regards as being of particular sensitivity.

Article 15 -- Agency Protection of Confidential Information

Article 15 requires the Agency to maintain a stringent regime to ensure effective protection against disclosure of commercial, technological and industrial secrets and other confidential information coming to its knowledge. The Board has approved a strengthened regime and is required under the Additional Protocol to review it periodically. This regime includes provisions relating to general principles and associated measures for the handling of confidential information, conditions of staff employment relating to the protection of confidential information, and procedures in cases of breaches or alleged breaches of confidentiality.

Article 16 -- Integration and Amendment of the Annexes

Article 16.a provides that the Annexes to the Additional Protocol are an integral part thereof. These Annexes provide technical definitions of key nuclear activities and equipment and material declarable under Article 2 of the Additional Protocol. Article 16.b provides that the Annexes may be amended by the Board upon the advice of a working group of experts established by the Board and open to all members of the Agency. Any such amendment will take effect four months after its adoption by the Board.

Article 17 -- Entry into Force

This provision establishes the date of entry into force of the Additional Protocol. Specifically, the Additional Protocol will come into force only when the Agency receives written notification from the United States that its statutory and constitutional requirements for entry into force have been met.

Article 18 -- Definitions

Article 18 sets forth the definitions of the following terms used in the Additional Protocol: nuclear fuel cycle-related research and development activities, site, decommissioned facility and decommissioned location outside facilities, closed-down facility and closed-down location outside facilities, high enriched uranium, location-specific environmental sampling, wide-area environmental sampling, nuclear material, facility, and location outside facilities.

Annexes

Annex I contains a list of nuclear-related activities, such as centrifuge manufacturing, required to be reported under Article 2.a(iv). Annex II contains the list of specified equipment and non-nuclear material for the reporting of exports and imports, as required by Article 2.a(ix). Annex II reproduces the list of specified equipment and non-nuclear material that was approved by the Board in 1992 for voluntary reporting of exports to the Agency.

[Go to: [U.S.-IAEA Safeguards Agreement](#)]

 [BACK TO TOP](#)